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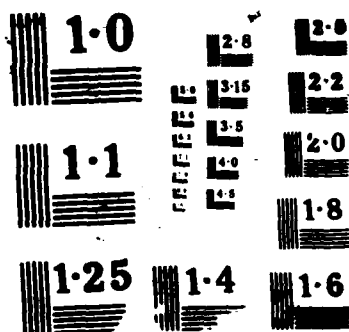
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Monterey, California



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THESIS

MAJOR NEW ISSUES CURRENTLY
AFFECTING GOVERNMENT ACQUISITION

by

Rebecca Adams Katz

June 1987

Thesis Advisor:

David V. Lamm

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87 8 28 1 47

REPORT DOCUMENTATION PAGE

1a REPORT SECURITY CLASSIFICATION Unclassified			1b RESTRICTIVE MARKINGS		
2a SECURITY CLASSIFICATION AUTHORITY			3 DISTRIBUTION/AVAILABILITY OF REPORT Approved for public release; distribution is unlimited.		
2b DECLASSIFICATION/DOWNGRADING SCHEDULE			5 MONITORING ORGANIZATION REPORT NUMBER(S)		
4 PERFORMING ORGANIZATION REPORT NUMBER(S)			7a NAME OF MONITORING ORGANIZATION Naval Postgraduate School		
6a NAME OF PERFORMING ORGANIZATION Naval Postgraduate School		6b OFFICE SYMBOL (If applicable) Code 54	7b ADDRESS (City, State, and ZIP Code) Monterey, California 93943-5000		
8a NAME OF FUNDING/SPONSORING ORGANIZATION		8b OFFICE SYMBOL (If applicable)	9 PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER		
8c ADDRESS (City, State, and ZIP Code)		10 SOURCE OF FUNDING NUMBERS			
		PROGRAM ELEMENT NO	PROJECT NO	TASK NO	WORK UNIT ACCESSION NO
11 TITLE (Include Security Classification) Major New Issues Currently Affecting Government Acquisition					
12 PERSONAL AUTHOR(S) Katz, Rebecca Adams					
13a TYPE OF REPORT Master's Thesis		13b TIME COVERED FROM _____ TO _____		14 DATE OF REPORT (Year Month Day) June 1987	
15 PAGE COUNT 120					
16 SUPPLEMENTARY NOTATION					
17 COSATI CODES			18 SUBJECT TERMS (Continue on reverse if necessary and identify by block number)		
FIELD	GROUP	SUB-GROUP	Acquisition; Acquisition Process; Contracting; Procurement; Packard Commission; Competition; Weapon Systems Warranties; Source Selection;		
19 ABSTRACT (Continue on reverse if necessary and identify by block number) The purpose of this thesis is to review and synopsize the major new issues currently affecting Government acquisition. The individual topics discussed are: (1) the Federal acquisition process, (2) the Packard Commission's recommendations and their effect on Government acquisition, (3) the role of competition in Government contracting, (4) the new requirements for weapon systems warranties, (5) the role source selection plays in the acquisition process, (6) how delays in contractor performance affect the Government, (7) the role of the Armed Services Board of Contract Appeals (ASBCA) in Government acquisition, (8) the recent changes in the Weighted Guidelines (WGLs) for profit, (9) the impact of the Defense Financial and Investment Review (DFAIR) Study on investment, progress payments and profit, and (10) the role Integrated Logistics Support (ILS) plays in major weapon systems acquisitions. This thesis					
20 DISTRIBUTION/AVAILABILITY OF ABSTRACT <input checked="" type="checkbox"/> UNCLASSIFIED/UNLIMITED <input type="checkbox"/> SAME AS RPT <input type="checkbox"/> DTIC USERS			21 ABSTRACT SECURITY CLASSIFICATION Unclassified		
22a NAME OF RESPONSIBLE INDIVIDUAL Dr. David V. Lamm			22b TELEPHONE (Include Area Code) (408) 646-2775		22c OFFICE SYMBOL Code 54Lt

Block 18.

Delays; Profit; Weighted Guidelines; Armed Services Board of Contract Appeals (ASBCA); Defense Financial and Investment Review (DFAIR); Integrated Logistics Support (ILS)

Block 19.

will serve to update the Manual of Acquisition Topics, a single desk reference guide for acquisition managers.

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Availability Codes	
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Major New Issues Currently
Affecting Government Acquisition

by

Rebecca Adams Katz
Lieutenant Commander, Supply Corps, United States Navy
B.B.A., University of Texas, 1976

Submitted in partial fulfillment
of the requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

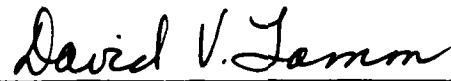
from the

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June 1987

Author:


Rebecca Adams Katz

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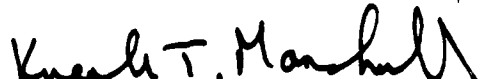
David V. Lamm, Thesis Advisor



Raymond W. Smith, Second Reader



Willis R. Greer, Jr., Chairman
Department of Administrative Sciences



Kneale T. Marshall
Dean of Information and Policy Sciences

ABSTRACT

The purpose of this thesis is to review and synopsise the major new issues currently affecting Government acquisition. The individual topics discussed are: (1) the Federal acquisition process; (2) the Packard Commission's recommendations and their effect on Government acquisition; (3) the role of competition in Government contracting; (4) the new requirements for weapon systems warranties; (5) the role source selection plays in the acquisition process; (6) how delays in contractor performance affect the Government; (7) the role of the Armed Services Board of Contract Appeals (ASBCA) in Government acquisition; (8) the recent changes in the Weighted Guidelines (WGLs) for profit; (9) the impact of the Defense Financial and Investment Review (DFAIR) Study on investment, progress payments and profit, and (10) the role Integrated Logistics Support (ILS) plays in major weapon systems acquisitions. This thesis will serve to update the Manual of Acquisition Topics, a single desk reference guide for acquisition managers. (P. 10)

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I. INTRODUCTION

A. OBJECTIVES OF THE RESEARCH

Acquisition in the Federal Government is an extremely complex field comprised of many rapidly changing areas. Defense acquisition alone is the largest business in the world with annual purchases approaching \$170 billion. The Department of Defense (DoD) processes nearly 15 million contract actions a year, which averages 56,000 contract actions every working day. These figures, compiled by the Packard Commission, are staggering considering the multitude of rules, regulations and pieces of legislation which must be complied with in order to do the job.

The purpose of this thesis is to synopsize the major issues currently impacting the field of Government acquisition. In addition to addressing current issues, this thesis will be used to update the Manual of Acquisition Topics, which serves as a single desk reference guide for acquisition managers and is maintained by the Naval Postgraduate School.

B. RESEARCH QUESTIONS

With the basic objective in mind, the primary research question is: What are the major issues currently affecting Government acquisition?

Secondary research questions are:

1. What is a current description of the Government acquisition process?
2. What effect has the Packard Commission Report had on Government acquisition?
3. How has the role of competition in Government contracting changed?
4. What new requirements exist for weapon systems warranties?
5. How does source selection affect the acquisition process?
6. What impacts do delays in performance by contractors under Government contracts, have on the customers?
7. What role does the Armed Services Board of Contract Appeals (ASBCA) have in defining the field of Government acquisition?
8. What are the recent changes in the profit policy weighted guidelines?
9. What impact, with respect to investment, progress payments and profit, has the Defense Financial and Investment Review (DFAIR) Study had on Government acquisition?
10. What role does Integrated Logistics Support (ILS) play in Government acquisition of major systems?

C. RESEARCH METHODOLOGY

The majority of the research for this thesis was done through a comprehensive search of the literature utilizing the Naval Postgraduate School Library, the Department of Administrative Sciences Library, Defense Logistics Studies Information Exchange (DLSIE), and the National Contract Management Association (NCMA). Telephonic and personal interviews of leading contracting practitioners were also

utilized. Current Department of Defense (DoD) directives, instructions, regulations and policy guidance were reviewed. Current information on each topic area was assimilated and synopsized to provide the acquisition practitioner with an up-to-date working knowledge in each of the ten areas being studied.

D. SCOPE OF THE STUDY

The main thrust of this thesis is to discuss the major issues currently affecting Government acquisition. These issues are:

1. The Acquisition Process
2. The Packard Commission Report
3. Competition in Acquisition
4. Weapon Systems Warranties
5. Source Selection
6. Delays
7. The Armed Services Board of Contract Appeals (ASBCA)
8. Weighted Guidelines for Profit
9. The Defense Financial and Investment Review (DFAIR) Study
10. Integrated Logistics Support (ILS)

The purpose of the thesis is to research and prepare an evaluation of each of the ten topic areas above for inclusion as an update to the Manual of Acquisition Topics. The updated manual will provide contracting practitioners with a working knowledge of the major issues currently impacting the field of Government acquisition.

To facilitate the use of the updated manual, the researcher strove to condense each new topic to a maximum of four pages, whenever possible. The user will then be able to develop a working knowledge of each topic area and refer to each section's references and bibliography for further study, if required. The thesis has an introduction, a conclusion and four additional chapters, which coincide with the chapter headings used in the Manual of Acquisition Topics, under which the ten topics discussed in the thesis fall. These four chapter headings are:

- a) Contracting and General Acquisition Subjects
- b) Legal Subjects
- c) Finance, Economics and Accounting Subjects
- d) Logistics Management Subjects

The chapter entitled "Production Subjects," which is found in the Manual of Acquisition Topics, is not included in the thesis because none of the ten current issues being studied happen to fall under the "Production Subjects" category. The final chapter includes conclusions and recommendations for each topic.

E. LIMITATIONS AND ASSUMPTIONS OF THE STUDY

Due to the nature of the thesis, only broad topics in each area are discussed. A comprehensive discussion of each subject would be too voluminous for inclusion in the Manual of Acquisition Topics and would be beyond the scope of this

study. The author assumes the reader is somewhat familiar with basic acquisition terminology, but does not have in depth knowledge in any of the topic areas.

F. ORGANIZATION OF THE STUDY

This thesis provides the reader with a synopsis of ten major issues currently affecting Government acquisition. This chapter discusses the researcher's objectives and the purpose of the thesis. Since this thesis will be used to update the Manual of Acquisition Topics, chapter headings coincide with those in the manual.

Chapter II discusses the contracting and general acquisition subjects of the acquisition process, the Packard Commission Report, competition in acquisition, weapon systems warranties and source selection.

Chapter III deals with the legal topics of delays and the Armed Services Board of Contract Appeals (ASBCA).

Chapter IV addresses the finance, economics and accounting subjects of the weighted guidelines for profit and the Defense Financial and Investment Review (DFAIR) Study.

Chapter V discusses the logistics management topic of integrated logistics support (ILS).

Chapter VI presents the author's observations, conclusions and recommendations on each of the ten issues currently affecting Government acquisition.

G. BENEFITS OF THE STUDY

The goal of this thesis is to help the practitioner in the field of Government contracting to understand the new issues which are currently impacting the profession. By identifying and discussing these issues, the practitioner will have a greater understanding of their impact. This thesis will serve to update the Manual of Acquisition Topics which is maintained by the Naval Postgraduate School and provided to acquisition professionals throughout the Federal Government.

II. CONTRACTING AND GENERAL ACQUISITION SUBJECTS

A. THE ACQUISITION PROCESS

The Characteristics and Analysis of the acquisition process must begin with a current definition of the process as it exists today. Federal procurement has been evolving virtually since the founding of this great nation. The current acquisition process has been shaped by the Congress, the courts, Government officials, military officers, lawyers, industry executives and the general public. Federal acquisition professionals are publicly accountable for their actions, and they must acquire quality goods and services, in a timely fashion, while maximizing competition and obtaining the most reasonable prices. Those engaged in the Government acquisition process are constantly confronted with a series of laws, regulations, procedures and legal precedents.

The sheer magnitude, diversity and complexity of Government contracting make an analysis of the acquisition process difficult. The acquisition process steps which apply to the smallest purchases must also apply to the purchase of major weapon systems. The phases of the major systems acquisition cycle are much longer and more complicated, but the acquisition process model is conceptually the same. Any analysis of the Federal

acquisition process is important and ongoing because the process is constantly changing and evolving as new regulations are written and new legislation is passed. Even as this analysis is being written, the first Under Secretary of Defense for Acquisition (USD(A)), Mr. Richard Godwin, is proposing new major systems acquisition milestones. The Federal acquisition process is highly dynamic, ever-changing and continues to unfold on a daily basis.

The Federal acquisition process is a mechanism for ensuring that decisions are made by a Government official at the lowest level of authority possessing a total view of the program, and at the proper timeframe in the procurement of goods and services for the Federal Government. In the acquisition of major weapon systems, decision points are strategically placed at critical steps, called major milestones, in the process. These critical milestone decisions in most programs are made by the Secretary of Defense who decides the program's fate. The critical decision points in any acquisition coincide with the major steps in the acquisition process such as: acquisition planning, sourcing, contract agreement and contract performance. The acquisition process attempts to ensure that these decisions are made by the appropriate people at the correct point in time. The Federal acquisition process is an effective management system of checks and balances, which provides a mechanism to oversee the spending of public funds.

1. Discussion

The acquisition process is the method the Federal Government uses to obtain needed supplies and services to perform its varied missions. It virtually encompasses all phases and functions related to the acquisition and it begins at the point when the activity's needs are established and continues through delivery and contract completion. Congressional statutes, executive orders and regulations provide the basic framework governing the Federal acquisition process. Although the process varies slightly from agency to agency and procurement to procurement due to the different procurement sizes and magnitudes, the basic acquisition process is outlined in the next section.

2. Steps in the Acquisition Process

a. Requirements Determination

- Needs/requirements are identified and an appropriately funded purchase request is generated.

b. Procurement Planning

(1) Selection of the basic form of procurement

- sealed bid
- competitive proposals
(negotiated procurement)

(2) Selection of the appropriate contract type based on:

- Government liability
- risks

- cost information
- nature of work
- current market conditions

c. Solicitation

- (1) In sealed bid - an invitation for bid (IFB) is prepared and issued.
- (2) In competitive proposals (negotiated procurement) - a request for proposals (RFP) is prepared and issued.

d. Source Selection

- (1) In sealed bid - bids are opened in public and responses are recorded and reviewed for mistakes. The lowest responsive and responsible bidder is determined.
- (2) In competitive proposals (negotiated procurement) - proposals are reviewed to select those offerors who are in the competitive range. Negotiate with all selected offerors as to the work, price, terms and conditions, contract type, etc.

e. Award

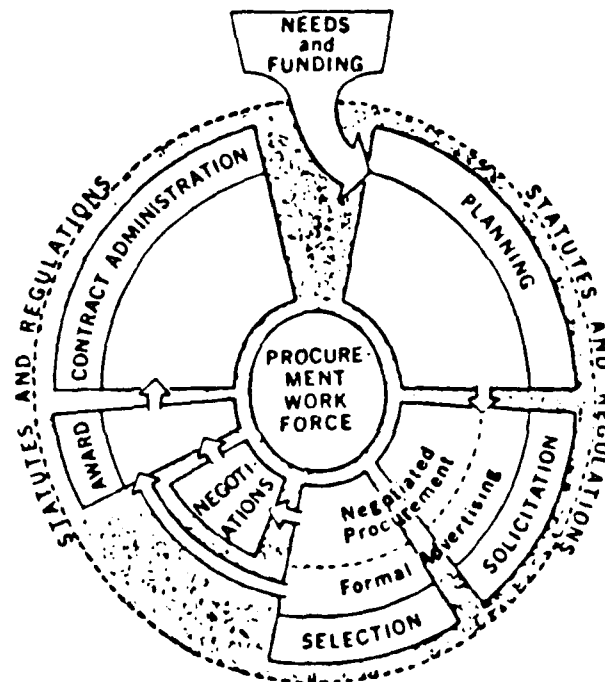
- (1) In sealed bid - award to the lowest responsive and responsible bidder.
- (2) In competitive proposals (negotiated procurement) - award to the offeror proposing the most advantageous offer to the Government when price and other factors are considered.

f. Contract Administration

- involves all actions necessary to assure compliance with the terms and conditions of the contract including the functions of:
 - (1) Audit
 - (2) Quality assurance
 - (3) Changes
 - (4) Receipt and inspection

3. The Model of the Acquisition Process

In 1972, the Commission on Government Procurement (COGP) published a model of the procurement process. Since then the COGP model has been widely recognized as the most representative model of the Federal procurement process. This model is displayed in Figure 2-1. [Ref. 1:p. 218]



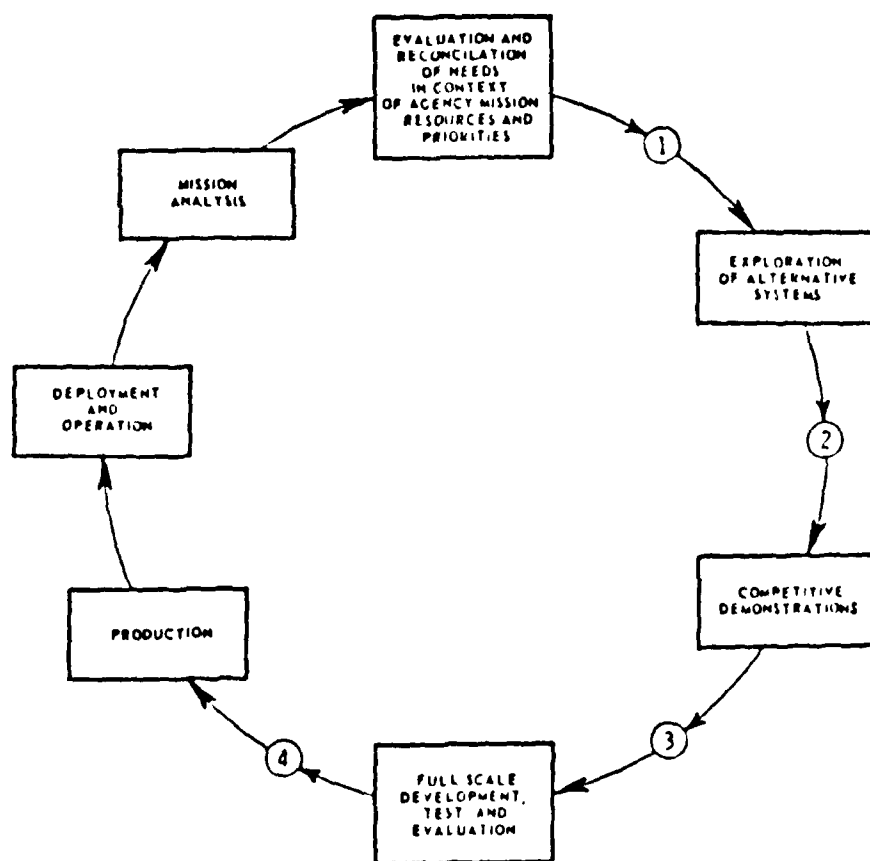
^aThe Commission on Government Procurement published this model in its report in 1972. It has been widely accepted as representative of the federal procurement process. With approval of the Competition in Contracting Act of 1984 the terminology used by the commission to represent the two principal methods of procurement could be changed to read sealed bidding and competitive proposals. Regardless, the model is an accurate representation of the system.

Source: Government Procurement Management by
Stanley N. Sherman

Figure 2-1: The Procurement Process

4. Major Weapon Systems Acquisition

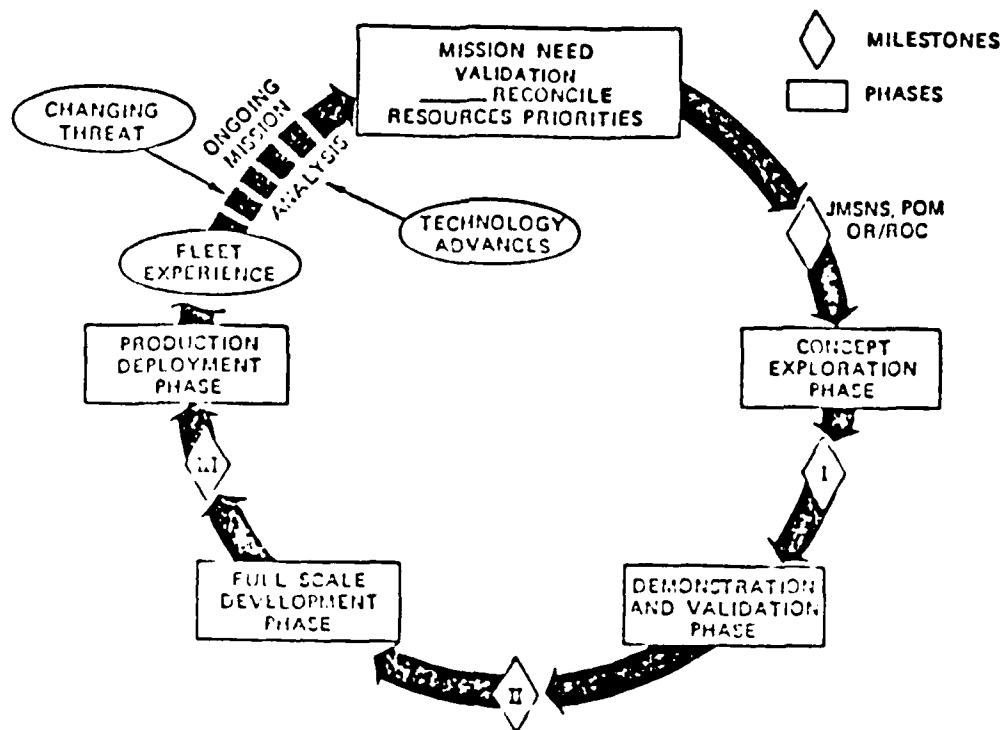
In the procurement of major weapon systems, the acquisition process is much longer and more complicated than the model presented in the last section. In 1976, the Office of Procurement Policy (OFPP) developed the model for major systems acquisition in compliance with the Office of Management and Budget (OMB) Circular A-109, "Major System Acquisitions." To implement A-109, DoD issued DoD Directive 5000.1, "Major System Acquisitions," and DoD Instruction 5000.2, "Major System Acquisition Procedures." The OFPP model is shown in Figure 2-2. [Ref. 1:p. 225]



Source: Government Procurement Management by Stanley N. Sherman

Figure 2-2: Major Systems Acquisition Cycle

The A-109 model has numbered decision points after each step in the major systems acquisition cycle starting after the requirements determination step. DoD refers to these various decision points as milestones and are shown in Figure 2-3. [Ref. 2:p. 1-13]



Source: Navy Program Manager's Guide

Figure 2-3: Acquisition Phases and Milestones

a. Phases and Milestones of the Major Systems Acquisition Cycle

(1) Requirements Determination Phase. During this phase a mission area analysis (MAA) is conducted in response to a new threat, projected obsolescence of existing systems, new technology or an opportunity for cost

reduction. If a new program is warranted, a Justification for Major System New Start (JMSNS) must be submitted. At the conclusion of the requirements determination phase, DoD Milestone 0, which is the same as A-109 decision point #1, occurs. The Secretary of Defense (SECDEF) issues a Program Decision Memorandum (PDM) (or a Secretary of Defense Decision Memorandum (SDDM) in the case of a joint program). If SECDEF approves, then the program can proceed. [Ref. 2:p. 1-12].

(2) Concept Exploration Phase. During this phase the program is actually initiated and a program manager (PM) is assigned. The PM solicits and evaluates alternative concepts which will fulfill or exceed the requirements of the mission need statement. The PM documents the results of the concept exploration phase in a system concept paper (SCP) and publishes them in a milestone review document (MRD). At the conclusion of the concept exploration phase, DoD Milestone I, which is the same as A-109 decision point #2, occurs. Again, the SECDEF publishes his/her decision in a SDDM, and if the program is given the go ahead it can proceed to the next phase. [Ref. 2:p. 1-14]

(3) Demonstration and Validation Phase. The demonstration and validation phase (DEM/VAL), involves demonstration of the systems or critical subsystems to verify performance and to see if a concept fulfills the mission need. In this phase, advanced developmental models

(ADM's) and functional breadboards are fabricated to perform operational testing. The results of this phase will be documented in a MRD. At the end of DEM/VAL, DoD Milestone II, which is equivalent to A-109 decision point #3, occurs. The SECDEF publishes his/her decision in a SDDM. [Ref. 2:pp. 1-14,1-15]

(4) Full-Scale Development (FSD) Phase. During FSD, a fully tested, documented and production engineered design of the concept selected during DEM/VAL is developed. It must be cost-effective, operationally feasible and able to be produced. The final product of FSD is the baseline configuration design and accompanying documentation. FSD has three subphases which are: (1) the engineering subphase, (2) the prototype subphase, and (3) the pilot-production/transition to production phase. The results of FSD are documented by the PM in a MRD. At the end of FSD, DoD Milestone III, which is equivalent to A-109 decision point #4, occurs. Usually the SECDEF delegates this decision to the appropriate Service Secretary. Milestone III can be split into two parts, with IIIA being the decision for initial production and IIIB for full-scale production. [Ref. 2:pp. 1-15, 1-16]

(5) Production and Deployment Phase. During this phase the developing activity procures the major weapon system and introduces it to the Fleet. Follow-on operational testing still takes place to provide feedback to

the producer for product improvement. In large volume programs there will usually be initial production with the developing contractor and second-sourcing with another producer. [Ref. 2:p. 1-16]

b. Proposed New Acquisition Milestones

Mr. Richard Godwin, the first Under Secretary of Defense for Acquisition (USD(A)), has proposed a change in the milestone process. The new acquisition system milestones are:

- (1) Milestone 0 (New Start)
- (2) Milestone I (Demonstration)
- (3) Milestone II (Full Scale Development)
- (4) Milestone III (Full Rate Production)
- (5) Milestone IV (Readiness and Support Phase)
- (6) Milestone V (Operational Phase)

These changes will bring more accountability to the program manager in the later years to ensure the weapon system is properly performing and fulfilling the need for which it was designed. See Figure 2-4. [Ref. 3]

5. References

1. Sherman, Stanley N., Government Procurement Management, Woodcrafters Publications, 1985.
2. Naval Material Command, Navy Program Manager's Guide, 1985 Edition.
3. Godwin, Richard P., Testimony before the Research and Development Subcommittee, House Armed Services Committee, House of Representatives, First Session, 100th Congress, 4 March 1987.

MILESTONE 0 (New Start)

- MISSION & REQUIREMENT CONFIRMATION
- SCHEDULE, BUDGET & AFFORDABILITY ANALYSIS
- TECHNICAL STATUS DETERMINATION
- BASELINE PLAN
- ACQUISITION STRATEGY
- MISSION NEED STATEMENT
- DAE RECOMMENDATIONS TO SECDEF
- DAE PREPARES PROLOG DECISION MEMO
- EXEC THRU COMPONENT ACQ EXEC

MILESTONE I (Demonstration)

- DEMO/VALIDATION STATUS
- TRAINING/PROTOTYPE ANALYSIS
- SYSTEM CONCEPT APPROVAL
- ACQUISITION STRATEGY
- GOALS OBJECTIVE STRATEGY APPROVAL
- BASELINE PLAN ACCEPTANCE
- DAE PREPARES SECDEF DEC MEMO
- EXEC THRU COMPONENT ACQ EXEC

MILESTONE II (Full Scale Development)

- DEVELOPMENT STATUS
- PROGRAM/DEV BASELINE PLAN
- ACQUISITION STRATEGY
- OPERATIONAL TESTING
- BASELINE PLAN ACCEPTANCE
- DECISION COORDINATING PAPER
- DAE PREPARES SECDEF DEC MEMO
- EXEC THRU COMPONENT ACQ EXEC

MILESTONE III (Full Rate Production)

- INITIATED PROGRAM BASELINE
- PRODUCTION BASELINE
- UPDATED DECISION COOR PAPER
- LOW RATE INITIAL PRODUCTION RPT
- DAE PREPARES SECDEF DEC MEMO
- EXEC THRU COMPONENT ACQ EXEC

MILESTONE IV (Readiness & Support Phase)

- POST ROC + 2 YEARS O&M RESULTS
- SYSTEM LIFE CYCLE ANALYSIS
- UPDATED DECISION COOR PAPER
- DAE DECISION AND RECOMMENDATION

MILESTONE V (Operational Phase)

- POST ROC + 2.5 YEARS RESULTS (PLANS VS RESULTS)
- OPERATE / RETIRE / NEW START
- DAE DECISION AND RECOMMENDATION

Source: Mr. Richard P. Godwin's Testimony before the Research and Development Subcommittee, House Armed Services Committee

Figure 2-4: Acquisition System Milestones

6. Bibliography for Further Study

DoD Directive 5000.1, Major System Acquisitions, 12 March 1986.

DoD Instruction 5000.2, Major System Acquisition Procedures, 12 March 1986.

Office of Management and Budget Circular No. A-109, "Major System Acquisition," 5 April 1976.

B. THE PACKARD COMMISSION REPORT

The Characteristics of the Packard Commission Report and an Analysis of the report would include the reason for the study, principal parts of the study, and its findings, conclusions and recommendations.

The President's Blue Ribbon Commission on Defense Management, headed by Mr. David Packard, was formed in July 1985 to study the issues facing defense management and report its findings and recommendations to the President. Initial recommendations were presented in the Commission's Interim Report issued on February 28, 1986. This report outlined ways to improve defense management in the following four major areas which were studied: (1) national security planning and budgeting, (2) military organization and command, (3) acquisition organization and procedures, and (4) government-industry accountability. In June 1986, the Packard Commission issued its final report entitled "A Quest for Excellence," a goal toward which all persons in defense management should strive. (Ref. 1:p. xi)

This analysis will concentrate on those findings and recommendations made by the Commission's Acquisition Task Force. The Packard Commission was established partly because public confidence in the effectiveness of the defense acquisition system was shaken by "horror stories" of overpriced spare parts, cost and schedule overruns, and testing failures of major weapon systems. This analysis

will focus on Chapter Three of the report entitled: "Acquisition Organization and Procedures." Chapter Three provides a detailed look at defense acquisition and how it can be improved. The task force divided its research into five sections: (1) Introduction, (2) The Scope of the Defense Acquisition System, (3) Problems With the Present Acquisition System, (4) An Acquisition Model to Emulate, and (5) A Formula for Action. In general, the task force concentrated on finding a model of excellence for the defense acquisition system to emulate and upon which reforms could be based. The task force found that most of the problems in defense acquisition were not caused by dishonesty or fraud. These problems were rather symptoms of greater problems affecting the entire acquisition system. They observed that the laws Congress was passing to correct the problems were instead aggravating the situation by making acquisition procedures more inflexible. [Ref. 2:p. A-3]

In analyzing highly successful acquisition programs in the commercial world as well as in Government, the task force identified six characteristics which were common to each program. These were: (1) clear command channels, (2) stability, (3) limited reporting requirements, (4) small, high quality staffs, (5) communication with users, and (6) prototyping and testing. [Ref. 1:p. 50] From studying these program characteristics, the task force developed nine

broad recommendations for changing the defense acquisition system. They are: (1) streamline acquisition organization and procedures, (2) use technology to reduce cost, (3) balance cost and performance, (4) stabilize programs, (5) expand the use of commercial products, (6) increase the use of competition, (7) clarify the need for technical data rights, (8) enhance the quality of acquisition personnel, and (9) improve the capability for industrial mobilization. Each of these recommendations is expanded upon in the next section. [Ref. 1:pp. 52-71]

1. Discussion

The Packard Commission was charged with evaluating the defense acquisition system and recommending ways to improve the system. To accomplish this task, the Commission formed an Acquisition Task Force. Instead of just analyzing the "horror stories," as others had done, the task force compared the defense acquisition process with successful systems in both the private and public sectors. In doing the comparison, the task force developed a model of excellence for the DoD acquisition system to emulate. The Packard Commission stressed that more Congressional legislation was not the answer to the problems facing defense acquisition, but rather a hindrance to the process. Instead of concentrating on spare parts procurement, the task force focused on the more expensive problems of cost overruns and long acquisition cycles in the procurement of major weapon systems. In addition to modeling defense

acquisition after the practices of the best companies in industry, the Packard Commission made nine recommendations for improving the defense acquisition system. These recommendations are entitled "A Formula for Action."

2. A Formula for Action

a. Streamline Acquisition Organization and Procedures

- (1) We strongly recommend creation by statute of the new position of Under Secretary of Defense (Acquisition) and authorization of an additional Level II appointment in the Office of the Secretary of Defense (OSD). [Ref. 1:p. 53]
- (2) The Army, Navy, and Air Force should each establish a comparable senior position filled by a top-level civilian Presidential appointee. [Ref. 1:p. 54]
- (3) Each Service Acquisition Executive should appoint a number of Program Executive Officers. [Ref. 1: p. 54]
- (4) Federal laws governing procurement should be recodified into a single, greatly simplified statute applicable government-wide. [Ref. 1: p. 54]
- (5) DoD should substantially reduce the number of acquisition personnel. [Ref. 1:p. 55]

b. Use Technology to Reduce Cost

We recommend a high priority on building and testing prototype systems to demonstrate that new technology can substantially improve military capability, and to provide a basis for realistic cost estimates prior to a full-scale development decision. Operational testing should begin early in advanced development, using prototype hardware. The early phase of R & D should employ extensive informal competition and use streamlined procurement processes. To promote innovation, the Defense Advanced Research Projects Agency should engage in prototyping and other advanced development work on joint programs and in areas not adequately emphasized by the Services. [Ref. 1:p. 55]

c. Balance Cost and Performance

A restructured Joint Requirements and Management Board (JRMB), cochaired by the Under Secretary of Defense (Acquisition) and the Vice Chairman of the Joint Chiefs of Staff, should play an active and important role in all joint programs and in all major Service programs. The JRMB should define weapon requirements for development, and provide thereby an early trade-off between cost and performance. [Ref. 1:p. 57]

d. Stabilize Programs

Program stability must be enhanced in two fundamental ways. First, DoD should fully institutionalize "baselining" for major weapon systems at the initiation of full-scale engineering development. Second, DoD and Congress should expand the use of multi-year procurement for high-priority systems. [Ref. 1:p. 59]

e. Expand the Use of Commercial Products

Rather than relying on excessively rigid military specifications, DoD should make greater use of components, systems, and services available "off-the-shelf." It should develop new or custom-made items only when it has been established that those readily available are clearly inadequate to meet military requirements. [Ref. 1:p. 60]

f. Increase the Use of Competition

Federal law and DoD regulations should provide for substantially increased use of commercial-style competition, emphasizing quality and established performance as well as price. [Ref. 1:p. 62]

g. Clarify the Need for Technical Data Rights

DoD must recognize the delicate and necessary balance between the government's requirement for technical data and the benefit to the nation that comes from protecting the private sector's proprietary rights. That balance must be struck so as to foster technological innovation and private investment which is so important in developing products vital to our defense. DoD should adopt a technical data rights policy that reflects the following principles:

- (1) If a product has been developed with private funds, the government should not demand, as a precondition for buying that product, unlimited data rights.
- (2) If a product is to be developed with mixed private and government funding, the government's rights to the data should be defined during contract negotiations.
- (3) If a product is developed entirely with government funds, the government normally acquires all the rights in the resulting data. [Ref. 1:p. 64]

h. Enhance the Quality of Acquisition Personnel

DoD must be able to attract and retain the caliber of people necessary for a quality acquisition program. Significant improvements should be made in the senior-level appointment system. The Secretary of Defense should have increased authority to establish flexible personnel management policies necessary to improve defense acquisition. An alternate personnel management system should be established to include senior acquisition personnel and contracting officers as well as scientists and engineers. Federal regulations should establish business-related education and experience criteria for civilian contracting personnel, which will provide a basis for the professionalization of their career paths. Federal law should permit expanded opportunities for the education and training of all civilian acquisition personnel. [Ref. 1:pp. 65-66]

i. Improve the Capability for Industrial Mobilization

We recommend that the President, through the National Security Council, establish a comprehensive and effective national industrial responsiveness policy to support the full spectrum of potential emergencies. The Secretary of Defense, with advice from the Joint Chiefs of Staff, should respond with a general statement of surge mobilization requirements for basic wartime defense industries, and logistic needs to support those industries and the essential economy. The DoD and Service Acquisition Executives should consider this mobilization guidance in formulating their acquisition policy, and program managers should incorporate industrial surge and mobilization considerations in program execution. [Ref. 1:p. 70]

3. Conclusion

President Reagan directed DoD to implement virtually all of the Packard Commission recommendations. The most dramatic change was the establishment of a new Under Secretary of Defense for Acquisition (USD(A)). In addressing the 25th Annual National Contract Management Association (NCMA) Educational Conference held in Los Angeles on 17 and 18 July 1986, Mr. David Packard stated that DoD has the "largest acquisition job in the world," with no one in charge on a full time basis. He said there needed to be a new Under Secretary of Defense for Acquisition (USD(A)). As a result of this Packard Commission recommendation, Congress passed legislation to establish the position which has been filled by Mr. Richard Godwin. [Ref. 3:p. A-4]

Many of the other recommendations will take more time and coordination to implement. Secretary of Defense Casper Weinberger tasked Deputy Secretary William Taft with monitoring DoD's implementation of the Packard Commission recommendations and coordinating the development of proposed legislation and regulations. [Ref. 4:p. A-10]

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C. COMPETITION IN ACQUISITION

The Characteristics and Analysis of competition in acquisition must first begin with an accurate definition of competition, a description of the different types of competitive markets and their application in the Government acquisition process. Competition is certainly not new to Federal procurement. Almost since the founding of the nation, competition has been the preferred method of obtaining goods and services for the Government. More recently President Reagan said, "Competition is fundamental to our free enterprise system." [Ref. 1] Competition is the rule and not the exception in Federal acquisition.

Any analysis of competition in acquisition should also discuss the Government's position on competition, the history of competition in Federal procurement, legislation impacting and affecting competition, the benefits and pitfalls of competition, and current initiatives to increase competition in Government acquisition of all goods and services, including major weapon systems.

The requirement for competition in the acquisition of defense goods and services is expressed in congressional legislation, regulations and instructions. The Armed Services Procurement Act (ASPA) of 1947 requires that contracts for goods and services be formally advertised or competitively negotiated, whenever practicable. The Competition in Contracting Act of 1984 (CICA) amended the

ASPA and made sweeping changes to Federal procurement by requiring full and open competition in all Government buys. "Full and open" competition means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. [Ref. 2:p. 0-1] The next section focuses on the major competition initiatives affecting Government contracting professionals today.

1. Discussion

Competition is the healthy rivalry between firms in the same industry fighting for the same business at the same time. It provides the basic catalyst for efficiency, innovation and growth in the economy. Competition is a positive natural force that regulates the economy. In their text book, Purchasing and Materials Management, Dobler, Lee and Burt state that:

It has been proved repeatedly that the element of competition, if not carried to extremes, acts as a catalyst that elicits better performance from an individual than would be the case without competition A supplier who is the sole source of supply sooner or later tends to become complacent with respect to such captive business While there are some advantages in dealing with a single supplier, for most items the buyer can mitigate supplier problems (poor quality, late deliveries, etc.) by consciously maintaining a healthy competition among suppliers. [Ref. 3:pp. 124-125]

2. Types of Competitive Markets

Economists characterize markets by degrees of competition. Using these classifications, they can develop theories about the relationship of demand, supply and price levels in different competitive market conditions. The principal classifications are as follows:

- a. Perfect competition, which exists when there are many sellers and buyers, the product is homogeneous and perfectly interchangeable and the market price is determined by supply and demand. The seller may decide to sell or refuse to sell at the existing price; he does not control the price. Some farm products may be traded under conditions of perfect competition.
- b. Effective competition, which is the same as perfect competition, except that the number of sellers is limited. However, there must be enough sellers so that no one seller dominates the market. All sellers are independent and active rivals and new firms can enter the market easily.
- c. Monopolistic competition, which is the same as perfect competition except that there is product differentiation; that is, the sellers are able to establish real or illusory differences among the products they offer for sale. The seller is able to control price to some degree if he can convince buyers that his product is different from those of other sellers. Much retail trade falls in this category.
- d. Oligopolistic competition, which exists when there are few sellers and many buyers of products that have degrees of difference. The seller, through advertising and quality differentiation, is able to control price to some extent. This kind of competition exists with steel and aluminum, for example, where there may be little real difference in product, and with automobiles, major appliances and machinery through product differentiation.
- e. Oligopsonistic competition, which is like oligopolistic competition, except that there are many sellers and only a few buyers.
- f. Monopoly, which exists where there is one seller and many buyers of a product that has no close substitutes. The seller has considerable control over price, so much so that the prices of some sellers, like utilities, are regulated. Monopoly also exists when as with sole source military items, there is one seller and one buyer. The seller's control over price varies according to circumstances that determine his bargaining strength.

- g. Monopsony, which exists when there are several sellers and one buyer of interchangeable products. Often the sellers tend to have little effective control over price. [Ref. 4:pp. 98-99]

Federal Government purchases are made from firms who fall into any one of these market categories. The diversity of products purchased by the Government makes it almost impossible to classify the Government marketplace into one market classification. However in the acquisition of major weapon systems, where components are highly specialized and technical, the market structure has been described as a bilateral monopoly. A bilateral monopoly exists when there is only one seller and one buyer. DoD is the single buyer of a highly complex weapon system developed by a single seller. [Ref. 5:p. 151]

3. The Competition in Contracting Act of 1984 (CICA)

The Competition in Contracting Act of 1984 (CICA) legally mandates the use of competition in the procurement of goods and services for the Federal Government. CICA requires "full and open" competition in all Government acquisitions. "Full and open" competition means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. Contracting with less than full and open competition is allowed only under extreme circumstances. [Ref. 4:p. 95]

Reacting to "horror stories" of fraud, waste, mismanagement and overpricing in the Federal acquisition process, Congress passed numerous pieces of legislation to

try to correct the deficiencies. The legislation called for more competition and less sole source contracting. In addition to CICA, which overhauled and replaced a good portion of the Armed Services Procurement Act and Title III of the Federal Property and Administrative Services Act, the Defense Procurement Reform Act and the Small Business and Federal Procurement Competition Enhancement Act were passed in 1984. In combination, these three new laws represented the first true all encompassing reform of the procurement statutes in 36 years. Congress passed the Deficit Reduction Act, which included CICA, and President Reagan signed it into law on 18 July 1984. In summary, CICA provided for the following major changes in procurement policy and regulations:

- a. Eliminates the preference for Formal Advertising, which puts Competitive Negotiation on the same level as Sealed Bid procedures. [Ref. 6:p. 45]
- b. Eliminates the seventeen exceptions to Formal Advertising and establishes the following seven new exceptions under which "other than competitive procedures" may be used:
 - (1) Property/services available only from one source; no other type of property/service will satisfy the need
 - (2) Unusual and compelling urgency
 - (3) Necessary to maintain the source for industrial mobilization
 - (4) Required by terms of an international agreement or a request of a foreign government
 - (5) Expressly authorized by statute
 - (6) Disclosure of the need would compromise National Security

(7) Head of the Agency determines it is necessary for Public Interest (30 days notice to Congress before award) [Ref. 6:p. 36]

- c. Requires Sealed Bid Procedures when the following four conditions are met, otherwise competitive proposals shall be requested:
 - (1) Time permits
 - (2) Award based on price, or price related factors
 - (3) Discussion with bidders was not necessary
 - (4) A reasonable expectation of receiving more than one sealed bid [Ref. 6:p. 36]
- d. Allows a head of an agency to exclude a particular source of supply in competitive procedures in order to establish or maintain an alternative source or sources of supply. [Ref. 6:p. 45]
- e. Allows agency heads to limit competition to small business concerns only, as long as all firms within that category are allowed to compete (with the exception of the 8(a) programs). [Ref. 6:p. 45]
- f. Exempts Small Purchases (under \$25,000) but stresses that competition must still be promoted to the maximum extent practicable. [Ref. 6:p. 45]
- g. Lowers the threshold requiring certified cost or pricing data under the Truth in Negotiations Act from \$500,000 to \$100,000. [Ref. 6:p. 45]
- h. Lengthens the required times for publishing pre-solicitation notices and awards in the Commerce Business Daily as follows:
 - (1) Requires pre-solicitation notices (synopses) of prospective contracts to be published in the Commerce Business Daily for at least 15 days before solicitations are issued.
 - (2) Requires contract awards over \$10,000 to be published in the Commerce Business Daily when subcontracts are likely. [Ref. 6:p. 37]
- i. Requires the appointment of a "competition advocate" within each executive agency. [Ref. 6:p. 45]
- j. Requires each executive agency to submit an annual report to Congress. [Ref. 6:p. 45]

- k. Authorizes GAO to decide protests and disputes concerning alleged violations of the procurement laws and regulations. [Ref. 6:p. 41]

4. Competition in Major Weapon Systems Acquisition

The importance of competition in the acquisition of major weapon systems cannot be overemphasized. The Competition in Contracting Act requires competition to be used throughout the entire acquisition cycle, during initial development through production and logistics support. Effective use of competition in weapon systems development and production is difficult to achieve. But, when applied correctly, competition can significantly reduce costs, help manage risk and improve technical performance. [Ref. 2:p. 0-1]

The Department of Defense (DoD) Appropriations Act of 1984, Public Law 98-212, requires that none of the funds made available by the Act may be used to fund the full-scale engineering development (FSED) of a major weapon system until the Secretary of Defense (SECDEF) has provided the following to the House and Senate Appropriations Committees:

- a. a certification that the systems or subsystems developed will be procured in quantities that are not sufficient to warrant development of two or more production sources, or
- b. a plan for the development of two or more sources for the production of the system or subsystem being developed. [Ref. 2:pp. 1-3, 1-4]

The Federal Acquisition Regulation (FAR) Part 14 and DoD Supplement require competition in the acquisition of goods and services. The Office of Management and Budget

(OMB) Circular A-109 directs government agencies to use competition whenever it is economical and beneficial. The use of competition in acquiring major weapon systems requires active management support, preplanning and market research in the early stages of the acquisition process. [Ref. 7:p. 156] The Competition in Contracting Act goes even further by requiring competition in production as well as in the development of major weapon systems. The program manager (PM) of the weapon system is responsible for achieving competition throughout the acquisition cycle, even into production.

There are actually two different types of competition in the acquisition of major weapon systems and they must be distinguished. They are:

- a. Design Competition - where firms compete by providing different solutions to satisfy a mission need. This occurs during a program's early design or validation phase. Design competition allows the best technical solution to be chosen. By its very nature, design competition reduces total program cost. [Ref. 8:p. 18]
- b. Production Competition - normally used following design competition, but can be used alone as can design competition. Production competition is totally different from competition for the best technical design. Production competition requires the maintenance of multiple sources of the same or functionally identical equipment and increases the industrial base as well. Effective production competition should be planned during design competition, where data rights, royalty payments and technology transfer details can be worked out and successfully negotiated. [Ref. 2:p. 1-11]

Once the program manager (PM) has made the decision to compete production, he/she must decide which technique to use to establish a second source. The five techniques used in DoD are:

- a. Form, Fit and Function (F^3) - The F^3 technique requires no involvement between the two production sources. The solicitation of competing suppliers is based on functional performance and external characteristics such as size, weight and interface requirements. This procedure is known as the "black box" concept where the internal workings of the system are unimportant. Competing sources can use different internal designs to produce the same desired result.
- b. Technical Data Package (TDP) - The TDP approach for establishing a second production source involves the use of a stand-alone technical data package to solicit proposals from competing contractors. The Government purchases the TDP from the original developer. This can be done by exercising the data rights clause in the development contract or by a separate procurement. The data package must be sufficient to stand alone to allow manufacture by other contractors. The fact that this requirement is very hard to fulfill makes this the riskiest of all second sourcing methods.
[Ref. 9:p. 14]
- c. Leader-Follower (L-F) - The leader-follower technique involves the direct transfer of technology from one contractor to another. The leader company assists the follower company in becoming a production source by furnishing manufacturing assistance and skills. The FAR requires these conditions to be present for the use of the leader-follower technique:
 - (1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower.
 - (2) No other source of supply can meet the Government's requirement without the assistance of a leader company.
 - (3) The assistance required of the leader company is limited to that which is essential to enable the follower company to produce the items.

- (4) Its use is authorized in accordance with agency procedures. [Ref. 2:p. 2-9]

The FAR identifies these three ways of developing the leader-follower relationship:

- (1) Award the prime contract to the leader company who is then obligated to subcontract a designated portion of the prime contract to a specified follower company, and assist the follower in producing the end items.
 - (2) Award a prime contract to the leader company to provide the needed assistance to the follower company, and award another prime contract to the follower company for production of the end items.
 - (3) Award a prime contract to the follower company for the end items who then must subcontract with a specified leader company for the necessary assistance. [Ref. 2:p. 2-9]
- d. Directed Licensing (DL) - The directed licensing technique involves the inclusion of a clause in the development contract which allows the Government to compete follow-on production contracts, select a winner and appoint the winner as a licensee. The Government then directs the developer, who is now the licensor, to provide technical assistance and production manufacturing data to the licensee in exchange for royalties or fees. The licensing agreement enables another company to become a productive second source. [Ref. 9:p. 15]
- e. Contractor Teaming (CT) - In contractor teaming, a team of two major contractors are chosen to design and test a system through FSED. Each member of the team designs, develops and fabricates components and subsystems of the system. Then they exchange engineering and manufacturing expertise with each other so that each contractor can produce the entire system alone. Once each team member is qualified, the team is split up and the two contractors compete for production awards. [Ref. 9:p. 16]

5. Benefits of Competition

Competition's foremost advantage is that it saves taxpayer dollars. Competition drives prices down leading to more realistic pricing, fewer cost overruns and reduced

program costs. On the average, a cost savings of 25% is realized by moving from a noncompetitive environment to a competitive one. [Ref. 4:p. 99]

In addition to providing more economic procurements, competition provides the following potential benefits:

- a. broadens the industrial base by expanding the number of sources for supplies and services.
- b. provides equitable sales opportunities to all responsible sources.
- c. deters waste.
- d. provides greater possibilities for receiving the best values.
- e. improves performance.
- f. results in better quality.
- g. results in better contractor designs.
- h. speeds programs.
- i. attracts innovative ideas.
- j. widens the technological base.
- k. reduces the need for obtaining certified cost or pricing data from prospective contractors and subcontractors.
- l. simplifies contract administration.
- m. helps to improve management.
- n. makes the procurement process less complex.
- o. reduces Congressional criticism.
- p. reduces appearances of favoritism.
- q. restores public confidence. [Ref. 4:pp. 99-100]

6. Conclusion

Competition is here to stay in Government acquisition. Thybony describes the situation best in this quote: "Maximum competition is the rule in Federal procurement. The Congress demands it; the President mandates it--not cursory or limited, but full and open." [Ref. 4:p. 95]

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D. WEAPON SYSTEMS WARRANTIES

The Characteristics and Analysis of weapon systems warranties must begin with the definition of a warranty, a description of the different types of warranties and how warranties apply to the acquisition of major weapon systems. The analysis should include a discussion of recent Congressional legislation mandating warranty coverage in all major weapon systems acquisitions.

Warranty usage has been common practice in industry for many years, but the Federal Government has just recently shifted the quality and performance risk of major weapon systems to the contractor on a large scale basis. Prior to the passage of Section 2403 to Title 10 United States Code, the Weapon Systems Warranty Act, the Government was self-insured. The shift in risk assumption from the Government to the weapon systems contractor makes the seller liable for the proper quality and performance of the weapon system. These warranties do not come without cost to the Government. The contractor charges the Government for warranty coverage, so in order to take full advantage of the benefits of warranty coverage, the Government must manage warranties carefully. This next section focusses on the warranty issues facing the Federal Government in the acquisition of major weapon systems.

1. Discussion

To adequately understand warranty issues, one must first understand what a warranty is. The Federal Acquisition Regulation provides this definition:

A warranty means a promise or affirmation given by a contractor to the government regarding the nature, usefulness, or conditions of supplies or performance of services furnished under the contract. [Ref. 1:46.701]

According to Cibinic and Nash:

The term warranty is used in a number of contexts. Its most restrictive meaning occurs in the traditional Government contract warranty clause (less frequently referred to as a Guaranty clause) simply gives the Government a remedy for patent defects discovered after acceptance. The reason for including such a clause is to overcome the finality of acceptance. [Ref. 2:p. 649]

They go on to say that in the commercial world,

. . . a warranty is a promise of the seller regarding the quality of the goods. In this sense the term is used to determine when a defect exists rather than to provide a remedy for the defect. [Ref. 2:p. 649]

Basically a warranty is a guaranty from the seller to the buyer that the warrantied product will not fail during the warranty coverage period. If it does fail, the seller will repair or replace the item. "With this assumption of additional risk, the seller generally charges the buyer increased costs for this deferred liability." [Ref. 3:p. 18]

2. Warranty Legislation

With the passage of the 1984 Defense Appropriations Act, specifically Section 794, Congress mandated warranty

use for weapon systems. Section 794 states that:

No funds . . . may be obligated or expended for the procurement of a weapon system unless the prime contractor or other contractors for such a system provide the United States with written guaranties. [Ref. 4:p. 154]

Written warranties now have the following requirements:

1. Weapon systems and components must conform to contractual performance requirements.
2. The weapon system and its components are to be free from defects that would cause failure to meet performance requirements.
3. In the event of failure, the contractor will bear the cost of achieving required performance. This particular reform was one of the initial actions of Congress to direct day to day procurements in DoD. [Ref. 5]

As part of the 1985 Defense Appropriations Bill, Congress amended the warranty legislation to make the 1984 Act more workable. "The new law, Section 2403 to Title 10 of the United States Code, directed the DoD to implement warranties on major weapon systems where warranties proved cost effective." [Ref. 3:p. 27] A cost-benefit analysis must be conducted to determine if use of the warranty would be cost-effective. This analysis must take into consideration the life cycle cost of the weapon system with and without a warranty.

3. Types of Warranties

Warranties are broke into two categories: implied and express. An implied warranty infers that the seller maintains title to the product, he has the authority to sell it, the product meets the standards of that particular

industry and it is suitable for use. The implied warranty is the standard warranty used in commercial business. On the other hand, an express warranty means the seller guarantees that the material delivered will meet the description on the order or the required performance. [Ref. 6:p. 589]

The two subsets of warranties which are most frequently used within the Federal Government are: design warranties and performance warranties. For example, if a contractor guarantees that the design of a product meets the specifications provided by the buyer, it is a design warranty. But, if a contractor guarantees that the product will perform its intended function at a certain level for a specified period of time, it is a performance warranty. [Ref. 7:p. 25]

Three express warranties commonly used within DoD are: the Reliability Improvement Warranty (RIW), the Mean Time Between Failure Warranty (MTBF), and the Logistic Support Cost Commitment (LSC). There are many more types of warranties in use within the Government, but these are the most common. A complete list of warranties used within DoD can be found in the Product Performance Agreement Guide. [Ref. 8:p. 4-12]

4. Benefits of Warranties

Warranties provide many benefits if they are properly managed. Some of the possible advantages of

warranties which could be realized at the working level are listed below.

- a. Direct or indirect motivation for designing and producing reliable and maintainable equipment. [Ref. 9:p. 5-62]
- b. Reduced initial requirements for support equipment, training, and data. [Ref. 9:p. 5-62]
- c. Reduced initial logistics problem if contractor repair is at "black box" level. [Ref. 9:p. 5-62]
- d. Long-term stabilized workflow for contractor repair work and increased chances for follow-on procurements. [Ref. 9:p. 5-62]
- e. Control of operational rather than test parameters. [Ref. 9:p. 5-62]
- f. Trade-off potential for guaranty of higher-level parameters, e.g., logistics support costs. [Ref. 9:p. 5-62]
- g. Extention of contractor's responsibility to field performance. Without a written warranty, the Government assumes all the risks for product performance and support. Under warranty both the Government and the contractor share the risks and rewards. [Ref. 10:p. 2-1]
- h. Improvement of performance, reliability, and quality. If contractors are committed to correcting warranty breaches at their expense, they have a strong motivation to meet or exceed levels of performance. [Ref. 10:p. 2-1]
- i. Reduction of life cycle costs. Contractors are motivated to reduce repair costs to minimize their liability. This could result in a corresponding reduction of support costs for the Government. [Ref. 10:p. 2-1]
- j. Early and rapid resolution of problems. Due to the warranty agreement and possible liabilities, problem areas receive high visibility and gain management attention. [Ref. 10:p. 2-1]
- k. Incentive for no-cost engineering change proposals. [Ref. 10:p. 2-1]

1. Realistic estimates of field performance. If contractor projections are overly optimistic, funds from a warranty can be depleted rapidly and profits reduced. [Ref. 10:p. 2-1]
- m. Improved evaluation of field performance. The contractor is motivated to participate in the early evaluation of field failures. [Ref. 10:p. 2-1]

All of these benefits will not be realized on any one program, but overall, enough will be realized to make warranties worthwhile in most cases. The key to a successful warranty program in the Federal Government is proper management attention.

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E. SOURCE SELECTION

The Characteristics and Analysis of source selection in the Government acquisition cycle must begin with a definition of source selection, its purpose, a description of the source selection process, and the responsibilities of the key players in the process. The analysis should include the applicability of source selection in the Government acquisition process and its importance in the acquisition of major weapon systems.

Source selection in a competitively negotiated procurement is one of the most costly and controversial aspects of the Government acquisition process. Improper source selection procedures continue to be the most frequently cited allegation in protests in the awarding of negotiated Government contracts. It is reasonable to understand why. Many of the contractors protesting these awards depend on Government contracts for their livelihood. The consequences of not receiving the award are great and they have little to lose by protesting. The increasing number of award protests due to allegations of improper source selection procedures could mean that the system needs some improvement. This next section describes the source selection process in competitively negotiated Government contracts. [Ref. 1:p. 1]

1. Discussion

According to the Federal Acquisition Regulation (FAR), the principal objectives of the source selection process are to:

- (a) Maximize competition;
- (b) Minimize the complexity of the solicitation, evaluation, and the selection decision;
- (c) Ensure impartial and comprehensive evaluation of offerors' proposals; and
- (d) Ensure selection of the source whose proposal has the highest degree of realism and whose performance is expected to best meet stated Government requirements.
[Ref. 2:15.603]

Source selection procedures should be "flexible and tailored to the requirements of the specific acquisition so as to minimize the cost of the process to Government and industry." [Ref. 3:p. 2] Price or cost to the Government should always be an evaluation factor in source selection.

2. Source Selection Players and Responsibilities

The Source Selection Authority (SSA) is responsible for the proper conduct of the source selection process. The SSA is responsible for:

- a. making sure the source selection plan and the evaluation criteria are consistent and accurately reflect the intent of the statement of work.
- b. appointing experienced personnel to the Source Selection Advisory Council (SSAC) and the Source Selection Evaluation Board (SSEB), in the case of major weapon systems procurements.
- c. making sure conflicts of interest, or the appearance thereof, do not occur.
- d. making and documenting the final selection decision.

The Source Selection Advisory Council (SSAC) is appointed by the SSA for advice and to prepare a comparative analysis of the evaluation results in major weapon systems acquisitions.

The Source Selection Evaluation Board (SSEB) is responsible for evaluating the proposals and reporting their results to the SSAC in the acquisition of major weapon systems. [Ref. 3:p. 3]

3. Source Selection Plan

The source selection plan is an integral part of the overall acquisition strategy. The acquisition strategy encompasses the entire acquisition process from needs determination to post production support in major weapon systems acquisitions. The source selection plan includes the evaluation criteria to be used in selecting a contractor.

The source selection plan typically has two sections: (1) the organization, membership, and responsibilities of the source selection team and (2) a description of the evaluation criteria and detailed procedures for evaluation of the proposals. Source selection information is confidential and must be protected to avoid unauthorized disclosure to ensure equality and fairness in the source selection process.

4. Evaluation Criteria

Evaluation criteria serve to inform the offerors of the importance placed by the Government on different aspects

of the proposal. Evaluation criteria consist of:

. . . a list of those aspects of a proposal that will be evaluated quantitatively and qualitatively to arrive at an integrated assessment as to which proposal can best meet the Government's need as described in the solicitation.
[Ref. 3:p. 5]

To ensure proper fairness, evaluation criteria and their importance must come from the statement of work. In addition, this information must be furnished to all potential offerors in the solicitation. Cost is always an evaluation criterion in source selection, but it often is not the overriding criterion in selecting contractors in the development of major weapon systems. As a criterion in development source selection, cost is given an order of importance in relation to the other criteria. This guidance allows the offeror to make intelligent tradeoffs between cost and mission requirements in his/her proposal. As cost becomes more important, other differences among proposals become small.

5. Proposal Evaluation

Proposal evaluation must be done in a fair and unbiased manner. Proposals must be evaluated based on the relative importance of the evaluation criteria. The source selection official, or the SSEB in major weapon systems procurements, evaluates only one proposal at a time and does not compare the merits of one proposal with another. No prescribed rating methodology exists. What matters is that proposals are rated consistently against the evaluation

criteria. In evaluating proposals, the "evaluators must consider the technical, schedule, operational readiness and support, and financial risks inherent in a proposal." [Ref. 3:p. 9] Evaluators may assess the risk of a proposal by reviewing the offeror's past performance. Proposals must be compared against independent cost estimates which are often Government estimates. Cost estimates must also be evaluated regarding cost realism and reasonableness. Cost realism means "The Government's objective is to pay a fair and reasonable price for work performed under contracts." [Ref. 3:p. 9]

6. Clarifications and Negotiations

The contracting officer is responsible for communicating with all offerors concerning their proposals. Clarifications can be initiated by either the offeror or the contracting officer to eliminate minor discrepancies or obvious clerical errors in the proposal. Clarification does not allow the offeror to change his/her proposal. According to the FAR, a deficiency "means any part of a proposal that fails to satisfy the Government's requirements." [Ref. 2:15.601] DoD Directive 4105.62 states that:

Deficiencies that clearly are understood by the evaluators and cannot be corrected without a major revision or a fundamental change in the technical approach proposed by the offeror shall be evaluated as proposed. [Ref. 3:p. 9]

"Discussions must be completed before a request for best and final offers. Negotiations are completed when best and final offers are received." [Ref. 3:p. 9] The final

steps include the SSAC's recommendation and the SSA's source selection decision and notification of award.

7. Conclusion

Source selection will always be a major step in the award of Government contracts. In order to reduce the number of awards that are criticized and even overturned as a result of protests, the Government acquisition professional must be extremely careful to structure and follow source selection procedures to the letter. Increased numbers of award protests negatively impacts the mission and efficiency of the Federal Government and the readiness of the military forces.

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III. LEGAL SUBJECTS

A. DELAYS

The Characteristics and Analysis of delays must begin with a definition of a delay in contractor performance, the different categories of delays and what constitutes an excusable delay. The analysis should also include a discussion of how delays in contractor performance affect the Government and who bears the risk as well as the cost.

Delays in contractor performance cost the Government time as well as taxpayer's dollars every year. Military readiness as well as Governmental efficiency suffers. Some delays are for good reasons and are excusable. Other delays are caused by contractors who enter into a contract with the Government knowing full well they will not be able to deliver on time. [Ref. 1:p. 409] Still others are caused by a combination of Government and contractor action or inaction. Each must be treated carefully and promptly.

The next section discusses the different types of excusable delays in contractor performance and who bears the risk of time and cost.

1. Discussion

Delays in contractor performance cause problems for both the Government and the contractor. In determining who bears the risk of both the time and cost of these delays,

the Suspension of Work, Government Delay of Work, and Stop Work Order clauses, are used to allocate the risk. These clauses deal separately with the time and cost effects of delays. According to Cibinic and Nash,

The contractor bears the risk of both time and cost for delays which he causes or which are within his control. Generally he is excused from non-performance because of delays caused by factors for which neither he nor the Government is responsible. However, he must bear the cost impact of such delays. The Government is responsible for both the time and cost effect of delays which it causes, which are under its control, or for which it has agreed to compensate the contractor. [Ref. 1:p. 409]

They go on to say that, "the interpretation of these clauses has resulted in a rather precise scheme of risk allocation for delays." [Ref. 1:p. 409]

2. Excusable Delays

The excusable delays provision protects the contractor from sanctions for late performance, such as termination for default, liquidated damages, actual damages, or excess costs of procurement or completion. According to Cibinic and Nash,

The fact that a delay is caused by one of the causes specifically referred to in the Default clause is, by itself, insufficient to justify the granting of an excusable delay. [Ref. 1:p. 412]

a. General Requirements

In order for a delay to be excusable, it must meet the following provisions.

(1) Unforeseeable. Foreseeability is defined as having knowledge or a reason to know prior to bidding. According to Cibinic and Nash:

A contractor is expected to know or have reason to know of the facts that are within the scope of its business operations pertaining to or possibly affecting its contract. However, the mere possibility that an event might occur does not establish foreseeability. [Ref. 1:p. 412]

(2) "Beyond the Control" of the Contractor. This is the prudent businessperson concept. If the contractor could have prevented the delay, then it is within his control. This concept can be applied in three ways. Cibinic and Nash describe them as follows:

If an event is considered to be foreseeable at the time of contracting and the contractor enters into the contract without making provisions to protect itself, it is not beyond his control because he assumed the risk of the event. The second application deals with events which the contractor could prevent from occurring. Such events are not beyond the contractor's control. Finally, events may be beyond the contractor's control if he could have overcome the effects of the event. [Ref. 1:p. 415]

(3) Without the Contractor's Fault or Negligence. In addition to the other two requirements, the delay must be without the contractor's fault or negligence. According to Cibinic and Nash, "'Fault or negligence' deals with acts or omissions of the contractor which cause delay." [Ref. 1:p. 418]

(4) Result in an Actual Delay in Delivery. Finally, in order for a delay to occur, it must result in an actual delay in delivery.

b. Enumerated Causes of Delay

The contractor is entitled to an excusable delay for certain types of events which are enumerated, or spelled out, in the clauses. These events are appropriately called enumerated causes of delay. They are listed and discussed below.

(1) Strikes. Delays caused by strikes by a contractor's own employees or by a subcontractor's employees, are generally excusable.

In order to obtain an excusable delay for a strike, a contractor must prove that he acted reasonably by not wrongfully precipitating or prolonging the strike and took steps to avoid its effect. [Ref. 1:p. 419]

(2) Weather. In both supply and construction contracts, unusually severe weather is a cause for excusable delay. Cibinic and Nash define unusually severe weather as " . . . weather that is abnormal compared to the past weather at the same location for the same time of year." [Ref. 1:p. 420] In addition, the weather reports and statistics used must be taken from the location of performance. They are usually compared with United States weather statistics for the same area over the past few years. [Ref. 1:p. 421]

(3) Government Acts. Government acts may be either contractual or sovereign acts. For a contractor to have an excusable delay due to a contractual act by the

Government, " . . . the contractor must prove that the Government act causing the delay was wrongful." [Ref. 1:p. 424]

Sovereign acts are those taken by the Government which affect the general public as well as the contractor. "Sovereign acts which delay the contractor's performance are grounds for excusable delays." [Ref. 1:p. 427]

(4) Subcontractor and Supplier Delays.

According to Cibinic and Nash,

When the delay is caused by problems encountered by a subcontractor or supplier, the contractor has an added burden in establishing excusability. Under the clauses currently in use, a delay by a subcontractor at any tier is not excusable to the contractor unless it is also excusable to the subcontractors at each tier. Thus, before the contractor can be excused, it must be shown that the cause of delay was beyond the control and without the fault or negligence of the contractor and all intervening contractors including the delayed subcontractor Thus, if a subcontractor fails to deliver due to a dispute between it and the contractor, the resulting delay will not be excusable since it will be considered to be the fault of the parties Delays caused by sole source subcontractors, even those designated by the Government, do not . . . ify for excusable delays if the subcontractor is a . . . ult. [Ref. 1:p. 428]

(5) Flood For a flood to be grounds for an excusable delay, the "'flood' must involve an overbank flow of water and that mere soaking or runoff was insufficient." [Ref. 1:p. 432]

(6) Fires. For a fire to be grounds for an excussable delay, the fire must directly affect the contractor or subcontractor. [Ref. 1:p. 432]

(7) Epidemics. For an epidemic to be grounds for an excusable delay, the epidemic must directly affect completion of the contract.

(8) Freight Embargoes. For a freight embargo to be grounds for an excusable delay, the embargo must directly affect the completion of the contract.

(9) Acts of God. An act of God is defined "as a 'singular, unexpected and irregular visitation of a force of nature' in" determining whether an act of God can be grounds for an excusable delay. [Ref. 1:p. 433]

c. Non-enumerated Causes of Delay

Some causes of delay are not spelled out in the contract clauses, and are called non-enumerated causes of delay. The courts must then decide whether the delay will be considered excusable.

The courts have taken a very restrictive view of the types of non-enumerated events which will be classified as excusable. Thus, absent an underlying cause specifically enumerated in the contract, delays caused by a lack of or inability to obtain know-how, material, personnel, money or machines are very difficult to establish as excusable. In almost all cases where such delays have been held excusable, the contractor has had to demonstrate that performance was at least a practical impossibility, a test not usually applied to delays arising out of causes specifically set forth in the clause. Whether this is so because the contractor is considered to have assumed the risk of the delay or because such matters are considered not beyond the control of the contractor is not readily apparent from the cases. [Ref. 1:pp. 433-434]

The following is a list of common non-enumerated causes of delay. The courts take a very narrow view when these causes are presented and requested to be accepted as excusable causes of delay.

- (1) Financial Difficulties
- (2) Lack of Facilities and Equipment
- (3) Lack of Materials
- (4) Lack of Know-How
- (5) Labor Problems

3. Conclusion

Delays in contractor performance cause management problems for both the contractor and the Government. Risk allocation is determined by the applicable delay clauses in the contract. Delays in contractor performance adversely affect the readiness of the armed forces and the Government in doing its job. While some delays are the fault of the contractor, many are caused by a combination of both Government and contractor actions and/or inactions. All cases of delay need to be handled carefully and promptly to avoid further delays or misunderstandings. Government and industry contracting professionals should put more attention on preventing delays before they occur.

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B. THE ARMED SERVICES BOARD OF CONTRACT APPEALS (ASBCA)

The Characteristics and Analysis of the Armed Services Board of Contract Appeals (ASBCA) must begin with a description of the board and its functions. A discussion of the ASBCA would include the effect of the Contract Disputes Act of 1978 and a description of the disputes procedure.

The Government's policy is to settle all contractor disputes and appeals at the contracting officer's level. Resolving differences by informal discussions strengthens the Government's relationships with its contractors. Every attempt to reach a mutual agreement should be made. Claims and disputes are costly to both the Government and the contractor. In addition to being costly, disputes are time consuming, and both parties would benefit by agreeing before a dispute arises. [Ref. 1:p. 85]

The next section describes the ASBCA and its role in the Government contract disputes process.

1. Discussion

Most Government acquisitions are completed as planned. However, disagreements and misunderstandings arise from time to time. Contracting officers have been trained to try to resolve these differences before the contractor files an appeal or a claim.

The disputes procedure used to resolve the differences between the contractor and the Government is an administrative means of resolving contract issues. The

facts are presented in hearings before an administrative board (the ASBCA). This disputes procedure is the traditional method of resolving differences arising between the contractor and the contracting officer. "Other remedies that might be used are (1) a request for relief to the General Accounting Office, (2) a suit in Federal court, and (3) a request for relief under Public Law 85-804." [Ref. 1:p. 80]

2. Background

The ASBCA was created in 1949 to handle the growing number of disputes caused by the increased volume of procurements. The original ASBCA consisted of three panels, one for each military service. In 1969 a new charter established one board for the entire Defense Department, comprised of attorneys qualified in contract law. Members of the Board are designated Administrative Judges. The Secretary of Defense appoints a chairman and two or more vice-chairmen from the Board members. The ASBCA follows Board rules established by the Office of Federal Procurement Policy (OFPP). The chairman subdivides the ASBCA membership in order to handle the case workload. [Ref. 1:p. 80]

3. The Contract Disputes Act of 1978

The Contract Disputes Act of 1978 (Public Law 95-653, effective 1 November 1978) established procedures and requirements for resolving disputes arising from a Government contract. The Commission on Government Procurement Report contained thirteen recommendations on the

resolution of contract disputes. [Ref. 2:p. 145] The Act incorporated the major features of the system recommended by the Commission. In its final version, the bill was supported by all major Government agencies, bar associations and contractor groups. The Act is implemented in Part 33 of the FAR.

Prior to the Act, breaches of contract which were by definition outside the scope of the contract, and therefore outside of the administrative process and contracting officer's authority, were tried in the courts. Disputes which by definition were inside the scope of the contract and therefore inside the administrative process, were under the authority of the contracting officer and the ASBCA. Although breaches and disputes involved essentially the same contract matter, one was adjudicated by the courts while the other by ASBCA.

The Contract Disputes Act of 1978 brought about many changes. Virtually all parties that traditionally had been advocating changes to the old system benefitted. [Ref. 2:p. 145] Some of the major provisions of the Act are:
[Ref. 2:pp. 145-160]

- (1) Establishes an "all disputes" provision eliminating the sometimes confusing distinction between disputes arising "under" the contract and those in breach of the contract, "outside" the contract. All fall within administrative procedures under the authority of the contracting officer.
- (2) Gives contractors the option of appealing directly to the courts, bypassing the ASBCA.

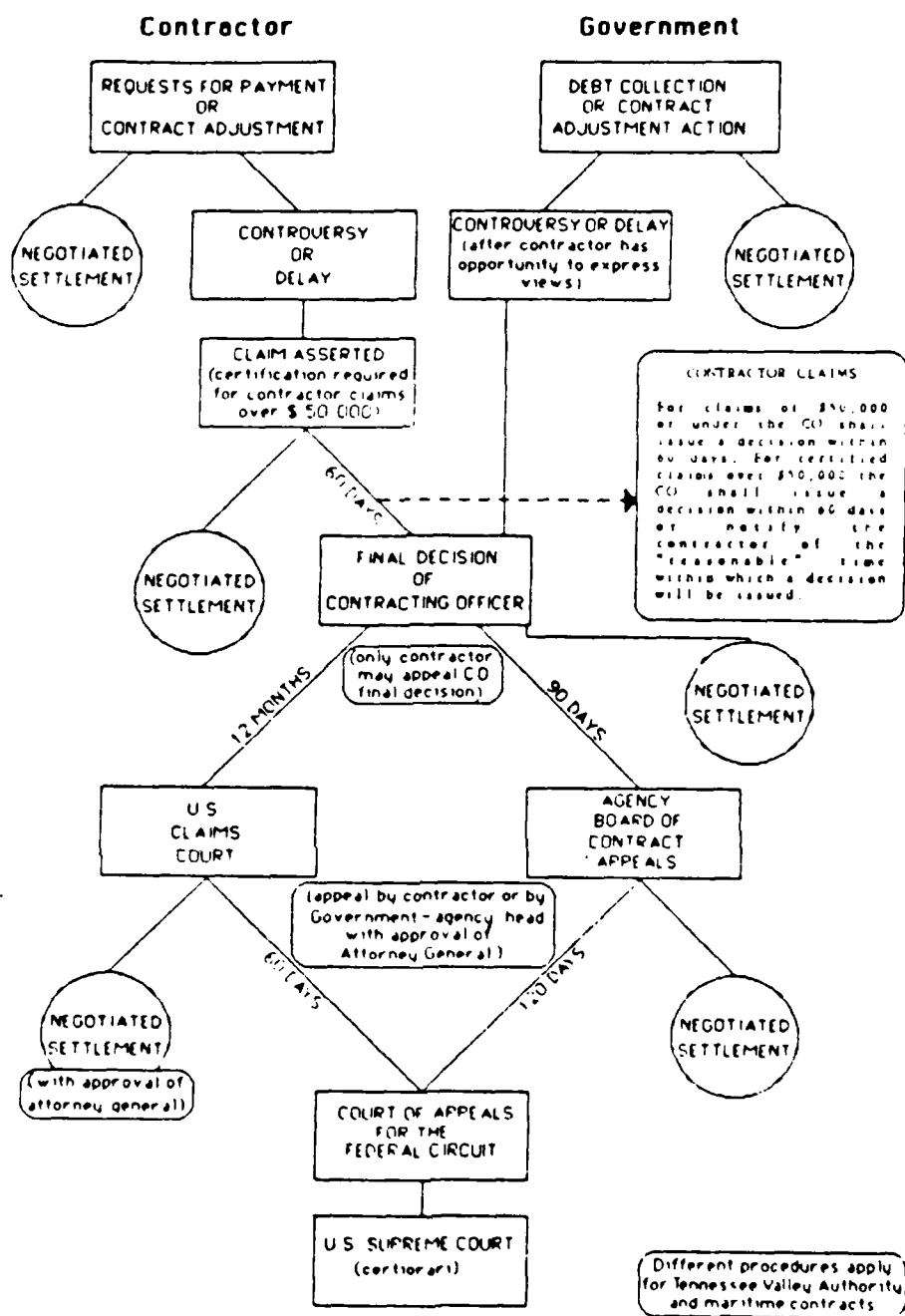
- (3) Strengthens the ASBCA by giving the clear grant of subpoena, discovery and deposition powers.
- (4) Gives the procuring agencies more flexibility in negotiating and settling contract disputes.
- (5) Enhances the ASBCA's ability to attract and retain competent and experienced members by raising the grades to the super grade level.
- (6) Benefits the judicial process by adding flexibility to the Court of Claims to either take new evidence on appeals necessary to dispose of a case, or to remand the case to the Board.
- (7) Recognizes the Government's right to seek judicial review of adverse Board decisions.
- (8) Establishes time limits for contracting officer's decisions.
- (9) Establishes "expedited" procedures for handling small claims (less than \$10,000) by ASBCA. Decision in 120 days or less.
- (10) Contains statutory requirement for interest on claims.
- (11) Establishes "accelerated" procedures for handling of disputes less than \$50,000 by ASBCA. Decision in 180 days or less.
- (12) Establishes an additional penalty for fraudulent claims to deter the filing of exaggerated claims and try to shore up the sanctions.
- (13) Requires a certificate for claims over \$50,000.

4. The Disputes Process

Figure 3-1 provides an overview of the disputes process. [Ref. 3:p. 949] The major steps in the process are outlined below.

a. Contractor Claims

Contractors must submit claims to the contracting officer for decision. The claim must be in



Source: Administration of Government Contracts by John Cibinic, Jr. and Ralph C. Nash, Jr.

Figure 3-1: Disputes Process

writing, and if it exceeds \$50,000, the claim must also be certified stating that:

- (1) the claim is made in good faith;
- (2) supporting data are accurate and complete to the best of the contractor's knowledge and belief; and
- (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable. [Ref. 3:p. 307]

b. Contracting Officer's Decision

Sometimes claims by or against a contractor cannot be resolved by a mutual understanding and agreement. In that case, the contracting officer must make a decision on the claim. In doing so the contracting officer must:

- (1) review the facts pertinent to the claim;
- (2) secure assistance from legal and other advisors;
- (3) coordinate with the contract administration office or contracting office, as appropriate; and
- (4) prepare a written decision that includes a:
 - (a) description of the claim or dispute;
 - (b) reference to the pertinent contract terms;
 - (c) statement of the factual areas of agreement or disagreement;
 - (d) statement of the contracting officer's decision, with supporting rationale; and
 - (e) notice that it is the contracting officer's final decision, which may be appealed to either the U.S. Claims Court or to the appropriate board of contract appeals. (ASBCA) [Ref. 4:pp. 307-308]

c. Timeliness of Appeals

The contractor may appeal the contracting officer's decision to the ASBCA or the U.S. Claims Court.

If the contractor decides to appeal to the ASBCA, he/she must do so in writing within 90 days from the date of the contracting officer's final decision.

If the contractor decides to bring action directly to the U.S. Claims Court, he/she must do so within 12 months of receiving the contracting officer's final decision. [Ref. 4:p. 308]

d. Time Limitations on Contracting Officer's Decisions

Contracting officer's final decisions must be made within the following limitations:

- (1) Claims of \$50,000 or less--within 60 days after receiving a written request from the contractor, or a reasonable period if no request is received.
- (2) Claims over \$50,000--within 60 days after receiving a certified claim or notify the contractor when a final decision will be made.

When the contracting officer does not issue a final decision within a reasonable amount of time, the contractor has the right to request the ASBCA to direct the contracting officer to issue a final decision within a specific time frame. [Ref. 4:pp. 308-309]

e. ASBCA Procedures

- (1) Small Claims Procedures--If the claim is \$10,000 or less, the contractor may request the expedited procedure which requires a decision within 120 days. The decision will be final and the contractor loses his/her right to appeal an unfavorable decision.
- (2) Accelerated Procedures--If the claim is \$50,000 or less, the contractor can request the accelerated procedure which requires a decision within 180 days. The contractor retains all rights to appeal an unfavorable decision.

- (3) Regular Procedures--If the claim exceeds \$50,000, a full board hearing will be held. A contractor with a claim of \$50,000 or less may also elect the regular procedure. [Ref. 4:p. 309]

f. ASBCA and U.S. Claims Court Decisions

ASBCA decisions are final unless appealed to the U.S. Claims Court by either the Government or the contractor within 120 days from receipt of the Board's decision. When an ASBCA decision is appealed, the U.S. Claims Court rules on questions of law, and only looks to see if the decision was " . . . fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence." [Ref. 4:p. 309-310] The ASBCA decision regarding any question of fact is final, however, the Court can take additional evidence or remand the case to the ASBCA for further hearing of new evidence.

5. Conclusion

The Government prefers to resolve all contract differences before they enter the disputes process. Disputes are costly for all concerned, not only in terms of dollars but in time and business relationships. The contracting officer and contractor should do everything possible to prevent misunderstandings from going into the disputes process through prompt resolution of all differences.

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IV. FINANCE, ECONOMICS AND ACCOUNTING SUBJECTS

A. WEIGHTED GUIDELINES FOR PROFIT

The Characteristics and Analysis of Weighted Guidelines for profit must begin with a description of the Weighted Guidelines (WGLs) method of profit analysis and a discussion of the recent changes to the policy which became effective 18 October 1986.

The WGLs method for establishing profit policy is DoD's structured approach for determining profit or fee objectives in acquisitions that require cost analysis. The purpose of the WGLs analytical techniques is to " . . . establish conditions to simulate the marketplace and give approximately the same results." [Ref. 1:p. 4-1] The Armed Services Pricing Manual (ASPM) describes WGLs as follows:

This method of establishing profit objectives promises higher or lower profit depending on the skills and resources needed to perform the contract, the amount of cost risk assumed by the contractor, the facilities capital investment required, and other, special factors. [Ref. 1:p. 4-2]

Since the new WGLs were implemented on 18 October 1986, the special factors have been deleted and the three major profit categories are now: (1) Performance Risk, (2) Contract Type Risk, and (3) Facilities Capital Employed. The new profit policy differs dramatically from the old policy in some areas. For instance, the emphasis has shifted from cost as a basis for computing profit to

facilities capital employed. Because of changes to the profit policy, contracting professionals in both Government and industry will find it necessary to adjust their attitudes toward contractor risk versus profit to be negotiated.

The next section will discuss the new Weighted Guidelines and how they affect the contracting officer as well as the contractor.

1. Discussion

The Federal Acquisition Regulation (FAR) requires Government agencies to use a structured method for analyzing and determining profit or fee objectives in acquisitions requiring cost analysis. WGLs, which first became effective 1 January 1964, is the method established by the DoD FAR Supplement (DFARS) to be used within DoD. According to the ASPM, the profit policy is to promote these objectives:

- a. Reward contractors who take on the more difficult tasks requiring higher skills.
- b. Encourage them to accept greater contract cost responsibility by establishing substantially different profit levels for different pricing arrangements and different cost-risk situations.
- c. Encourage them to make cost-effective capital investments.
- d. Encourage them to use nongovernment resources.
[Ref. 1:p. 4-2]

The WGLs for profit is DoD's way of attempting to achieve a uniform and consistent method for contracting officers to develop prenegotiation profit objectives,

whenever cost analysis is used in preparing for a contract negotiation. There are some exceptions as follows:

- a. Architect-engineering contracts
- b. Management contracts for operation and maintenance of Government facilities
- c. Construction contracts
- d. Contracts primarily requiring delivery of material supplies by subcontracts
- e. Termination settlements
- f. CPAF contracts
- g. Contracts expected to be \$500,000 or less
- h. Unusual situations, determined by the head of the contracting activity, which would not result in a reasonable profit objective [Ref. 2:p. 2]

2. The Defense Financial and Investment Review

The Defense Financial and Investment Review (DFAIR), an 18-month joint-service study of DoD contract profit policies and contract financing, recommended sweeping changes to the WGLs method of establishing prenegotiation profit objectives in defense contracts. The DFAIR project was chartered by the Deputy Secretary of Defense in December 1983, and the project's final report was issued in May 1985. Eleanor Spector (Deputy Assistant Secretary of Defense for Procurement) in testimony before the House Subcommittee on Legislation and National Security stated that "what contrasted most from prior DoD-wide reviews is that the contracts financing and profit policies were examined on an interrelated basis rather than as individual issues." [Ref. 3:p. A-18] She noted that DFAIR focused on two main

objectives: (1) " . . . the project team was to measure differences in profit between defense contracting and the commercial marketplace," (Ref. 3:p. A-18] and (2) " . . . the project team was to explore areas where there was a potential for meaningful reform." [Ref. 3:p. A-18]

The DFAIR Study recommended that the Secretary of Defense make significant changes to the DoD profit policy. Secretary Taft screened the recommendations and directed the Defense Acquisition (DAR) Council to draft the appropriate regulatory language to direct the following:

- a. Continue to use Weighted Guidelines (WGLs) method of developing profit objectives.
- b. Base profit on three areas: Performance risk, contract type risk, facilities capital employed.
- c. Encourage contractors to submit proposed profit amounts using WGLs format to facilitate discussion of individual profit amounts.
- d. Encourage primes to use WGLs in developing subcontractor profit objectives.
- e. Transfer profit weighting from cost to facilities capital investment.
- f. Exclude G&A from allowable cost base for profit calculation.
- g. Eliminate most special profit factors.
- h. Subcategorize facilities capital by asset type (land, buildings, equipment).
- i. Establish a working capital adjustment factor for fixed-price contracts.
- j. Establish profit objectives and ranges for three areas of profit considerations. [Ref. 2:pp. 1-2]

In direct contract to the old profit policy, the DFARS encourages contractors to submit their proposed profit

amounts to the Government using the new WGLs form. This change is to facilitate discussion of profit factors during negotiations. The DFARS also encourages contractors to use the new WGLs form in negotiating profit with their subcontractors. [Ref. 2:pp. 3-4]

3. The New Profit Policy

The new WGLs method uses a revised DD Form 1547, entitled "Record of Weighted Guidelines Method Application." A sample of DD Form 1547 is provided in Figure 4-1. The new policy bases profit on the following three major profit categories and subcategories:

a. Performance Risk

- (1) Technical considerations
- (2) Management considerations
- (3) Cost considerations
- (4) Adjustment for Low-Facilities Capital

b. Contract Type Risk

- (1) Firm-Fixed-Price (FFP), including working capital adjustments
- (2) Fixed-Price Incentive (FPI), including working capital adjustments
- (3) Cost-Plus-Incentive-Fee (CPIF)
- (4) Cost-Plus-Fixed-Fee (CPFF)

c. Facilities Capital Employed [Ref. 2:p. 4]

A brief discussion of each of the three major profit categories and subcategories is presented in the next section. It should be noted that under the new policy, the

Replaces DD form 1547 and DD form 1499 which are obsolete

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contracting officer is instructed to assign a profit percentage which equals the average rate (known as the normal value) unless a higher or lower rate (within limits) can be adequately justified.

4. Profit Categories

a. Category 1--Performance Risk

This category judges the contractor's amount of performance risk. The range is 3-5% and the normal value is 4%. The subcategories are: (1) technical considerations, (2) management considerations, and (3) cost considerations. Each subcategory is evaluated separately and then all are averaged for a composite performance risk factor value. An adjustment for low facilities capital exists for use where research and development or service contractors have a minimum of facilities capital but experience a significant amount of performance risk. Values up to 6% may be assigned to these contractors if circumstances warrant, but approval must be obtained from the level above the contracting officer, and the contractor must meet these criteria:

- Facilities capital allocations for buildings/equipment is less than 2% of total contract costs (including General and Administrative (G&A) and Independent Research and Development (IR&D)/Bid and Proposal (B&P)
- Not in DoD's interest to place substantial incentive on facilities capital investment
- Involves highly skilled and complex effort, such as state-of-the-art R&D or highly specialized technical services to Government-owned equipment/facilities
[Ref. 2:pp. 8-9]

b. Category 2--Contract Type Risk

This category evaluates the degree of risk and cost responsibility assumed by the contractor in the specific contract type. The highest value is assigned to Firm-Fixed-Price (FFP) contracts and the lowest value is assigned to Cost-Plus-Fixed-Fee (CPFF) contracts. A working capital adjustment factor must be computed for fixed-price contracts in accordance with a formula provided in the DFARS. [Ref. 4:15.9] The percentage ranges for each type of contract are:

- (1) Firm-Fixed-Price (FFP) contracts -- 5-7%
(Normal -- 6%)
- (2) Fixed-Price Incentive (FPI) contracts -- 3-5%
(Normal -- 4%)
- (3) Cost-Plus-Incentive-Fee (CPIF) contracts -- 1-3%
(Normal -- 2%)
- (4) Cost-Plus-Fixed-Fee (CPFF) contracts -- 0-.5%
(Normal -- 0%)
[Ref. 2:pp. 9-13]

c. Category 3--Facilities Capital Employed

This category recognizes the contractor's facilities capital to be utilized during contract performance. Assets are categorized as follows, with ranges and normal values:

- | | | |
|---------------|--------|-----------------|
| (1) Land | 0-0% | (Normal -- 0%) |
| (2) Buildings | 5-15% | (Normal -- 10%) |
| (3) Equipment | 25-35% | (Normal -- 30%) |
- [Ref. 2:pp. 13-15]

5. Conclusion

The new WGLs procedures are a dramatic departure from the old profit policy. The contracting officer must now justify any deviations from the normal values when evaluating the contractor's profit factors. The removal of G&A, IR&D and B&P costs from the cost base will force contractors to accurately direct charge expenses; and profit will no longer be allowed on these overhead costs where cases of questionable charges have occurred.

6. References

1. Department of Defense, Armed Services Pricing Manual, 1986.
2. Lamm, David V., Analysis of the Department of Defense Proposed Contract Profit Policy Revision, Working Paper No. 86-24, Naval Postgraduate School, Monterey, California, November 1986.
3. "Financing: Spector Gives Overview of DFAIR Before House Subcommittee," Government Contracts Service, Vol. 15-86, 15 August 1986.
4. Department of Defense Federal Acquisition Regulation Supplement, (DFARS), 1986.

7. Bibliography for Further Study

Federal Acquisition Regulation (FAR), Part 15.9, 1984.

B. DEFENSE FINANCIAL AND INVESTMENT REVIEW (DFAIR) STUDY

The Characteristics and Analysis of the Defense Financial and Investment Review (DFAIR) Study should include the purpose of the study, and a discussion of its major findings, conclusions and recommendations. In addition, the analysis should describe reactions to the study by leaders in DoD, and their subsequent actions as a result of the study.

The DFAIR Study was organized by DoD, in response to a number of reviews and studies conducted during 1981 and 1982 regarding DoD's contract financing and profit policies. DFAIR was tasked with reassessing DoD's policies toward profit and contract financing in a rapidly changing business environment. This next section will give the reader an overview of the DFAIR Study, the initiatives it was able to formulate, and the recommendations which have been adopted.

1. Discussion

On 2 December 1983, the Deputy Secretary of Defense chartered DFAIR to study and make recommendations to him regarding DoD's contract pricing, financing and profit policies. DFAIR's task was to determine if these policies were,

. . . resulting in effective and efficient spending of public funds and maintaining the viability of the defense industrial base, and to make recommendations for improvement. [Ref. 1:p. E-1]

In an appearance before the Subcommittee on Legislation and National Security of the House Committee on Government Operations to discuss DFAIR, Eleanor Spector, Deputy Assistant Secretary of Defense for Procurement, stated that the study had two main objectives:

First, the project team was to measure differences in profit between defense contracting and the commercial marketplace. Second, the project team was to explore areas where there was a potential for meaningful reform. In both cases, findings and recommendations were to be developed as a joint-service effort and presented for Deputy Secretary Taft's consideration. [Ref. 2:p. A-18]

The DFAIR could not rely totally " . . . on traditional profit techniques such as return on sales or return on assets . . . " because they " . . . would not present a completely meaningful picture of relative profitability." [Ref. 2:p. A-18] Spector goes on to say:

The DFAIR project team, therefore, supplemented these traditional methods with an "economic profit" concept. This concept essentially removed comparability distortions that were caused by differing contract financing methods and their accounting method, as well as the differing mix of assets employed in the production of goods and services. [Ref. 2:p. A-18]

The review was an 18-month joint-service project which completed in May 1985. According to Spector, at the end of the study, the " . . . team found that overall the profitability of the defense industry was economically balanced and provided a reasonable return for involvement in defense contracting." [Ref. 2:p. A-19] The study examined financial data covering a 14-year period. Spector felt " . . . the most significant finding was that the contract financing and profit policy were poorly integrated and

lacked adequate responsiveness to changes in the economy." [Ref. 2:p. A-19] She also said there was room for reform in the Weighted Guidelines method for developing negotiation profit objectives currently in use by DoD contracting officers. [Ref. 2:p. A-19]

2. Findings, Recommendations and Decisions

This section discusses the seventeen findings and recommendations of the DFAIR Study, and Deputy Defense Secretary (DEPSECDEF) Taft's decisions regarding their implementation.

a. Interest Expense

The DFAIR Study found that contractor interest expense should not be an allowable contract cost. Even though interest expenses are ordinary and necessary for contractors to conduct defense business, the DFAIR Study recommended that contractor interest expense should continue to be an unallowable cost on defense contracts. As a result of this recommendation, Deputy Secretary of Defense Taft (DEPSECDEF) decided to continue to make interest an unallowable cost.

b. Contract Financing and Profit Policy Integration

The DFAIR Study concluded that DoD's contract financing and profit policies are not sufficiently integrated. Members of the study recommended that the best way to integrate the policies, would be to link the application of progress payments with developing profit objectives under the Weighted Guidelines (WGLs) Method. The

contract price of DoD contracts would fluxuate up or down based on the interest rate at the time. In addition, profit would be aligned with actual financing requirements. Based on the DFAIR Study recommendations, DEPSECDEF decided to revise the profit policy to integrate contractor financing, Government-furnished progress payments, and changes in the interest rate. This recommendation was implemented in the revised WGLs which became effective 18 October 1986.

c. Balance Between Profit and Progress Payments

The DFAIR Study felt that current DoD progress payment and profit policies are not balanced enough to compensate contractors for financing requirements. DFAIR concluded that progress payments and profit policies should be structured to reimburse contractors for financing. DFAIR recommended that profit recognition be set at 2% and that the progress payment rate be 85%. Since the completion of the DFAIR Study, interest rates have dropped considerably. For this reason, DEPSECDEF decided to leave the progress payment rate at 80% and not to provide an offsetting increase to the profit objective. DEPSECDEF later changed the progress payment rate to 75% for large businesses and 80% for small businesses.

d. Foreign Military Sales (FMS) Progress Payments and Profit

DFAIR found that the progress payment rates authorized on FMS contracts are too high and recommended removing the differential between FMS and domestic

contracts. The DEPSECDEF agreed and decided to remove the differential. This action was completed with the new revision of the WGLs effective 18 October 1986.

e. Economic Price Adjustment (EPA) Clause

DFAIR found that DoD has not effectively used Economic Price Adjustment (EPA) clauses during periods of economic uncertainty. They recommended that EPA clauses be used on all large dollar contract with a period of performance of three years or longer. Secretary Taft agreed to using EPA clauses for major elements of direct costs on all large dollar contracts with a period of performance three years or longer.

f. Small Business Customary Progress Payment Rate

DFAIR found that the progress payment rate for small businesses was 90% versus 80% for large businesses. They felt the 10% differential should be narrowed. DEPSECDEF agreed with DFAIR's recommendation to restore the 5% differential by making the small business progress payment rate 85%. DEPSECDEF has since reduced the small business progress payment rate to 80%.

g. Flexible Progress Payments

DFAIR felt that the flexible progress payment rate policy needed to be more closely calibrated with the standard progress payment rate. As a result, DFAIR recommended that the minimum level of contractor investment

for computing flexible progress payments be set at 100% minus the standard progress payment rate of 85%, which equates to 15%. DEPSECDEF agreed to make this change.

h. Progress Payment Frequency

DFAIR concluded that the current DoD policy for making progress payments no more than monthly is reasonable. DEPSECDEF took DFAIR's recommendation to keep the progress payment frequency monthly.

i. Timing of Invoice and Financing Payments

DFAIR found that confusion existed about when to pay invoice and financing payments to DoD contractors. The two circumstances are quite different, and needed clarification as when payments should be made. DFAIR recommended that invoice payments should be made 30 days after receipt of the contractor's invoice or the goods and/or services whichever occurs later. They also recommended that contract financing payments continue to be made as soon as possible, within 5 to 10 days after receipt of the progress payment request. Secretary Taft agreed to implement DFAIR's recommendations.

j. Milestone Billings

DFAIR found that milestone billings on long term contracts, where deliveries were not made until late in the period of performance, needed to be reinstated. DFAIR recommended to Secretary Taft that milestone billings,

including partial profit payments be restored. He agreed with the DFAIR finding and directed the change to be made to the DFARS.

k. Simplification of Weighted Guidelines (WGLs) Method

DFAIR felt the WGLs Method of determining profit objectives is too complicated and needed to be simplified. As a result they recommended reducing the number of profit factors and narrowing the range of factors. Secretary Taft approved the recommendation and directed the changes which became effective with the new WGLs on 18 October 1986.

1. Defense Acquisition Circular (DAC) 76-23

DFAIR found the current WGLs 3-column approach for developing profit objectives is confusing and a disincentive to investment in capital assets. They concluded that the current approach caused an unintended increase of .5% to 1% points in profit objectives, and recommended rescinding DAC 76-23 and adopting a single policy for all types of contract effort. This would reduce profit objectives .5% to 1% points. This recommendation was accepted by DEPSECDEF and implemented with the new WGLs effective 18 October 1986.

m. Contract risk

The current contractor risk factor does not include consideration for risk relating to contract period of performance or contractor share of cost risk in incentive type contracts. DFAIR recommended adjusting the risk factor

to recognize the impact of length of contract and establish a direct link between risk and the contractors' cost share ratio. DEPSECDEF decided to recognize contract length as a factor in determining profit objectives to redistribute profit objective amounts between short and long-term contracts. In addition, Secretary Taft decided to recognize the link between risk and the contractors cost share of overruns and underruns to redistribute profit objectives for incentive type contracts by degree of cost risk sharing.

n. Profit on Facilities Capital Employed

DFAIR found that the current profit policy provides equal reward to all fixed assets regardless of their contribution to potential productivity increases. DFAIR recommended establishing a lowest-to-highest priority in the factors for fixed assets (as applied to net book value of capital assets employed) as follows:

	<u>CURRENT FACTORS</u>	<u>POSSIBLE REVISION</u>
Land	16 - 20%	0 - 0% Lowest
Furniture/Fixtures	16 - 20%	4 - 8%
Buildings	16 - 20%	6 - 10%
Equipment	16 - 20%	16 - 20% Highest

DEPSECDEF decided to establish factors for capital employed in relationship to the potential for cost reduction, with land having the lowest factor and equipment having the highest factor. The actual factor values included in the newly revised WGLs which became effective 18 October 1986 are as follows: (1) Land--0%, (2) Buildings--5-15%, and (3) Equipment--25-35%.

o. Profit on Indirect Expenses

DFAIR recommended eliminating general and administrative (G&A) expenses from the cost base for determining the profit objective and reducing profit factors for overhead. Secretary Taft agreed with DFAIR's recommendation and eliminated G&A expense from the cost base for determining the profit objective and reduced factors for overhead by 50%. This change was implemented in the new WGLs effective 18 October 1986.

p. Special Factors

DFAIR felt that special factors in the current WGLs were rarely used and were generally used as "fillers" to generate extra profit. DEPSECDEF accepted the recommendation from DFAIR to remove the special factors from the profit policy. This change became effective on 18 October 1986 with implementation of the new WGLs.

q. Cost Accounting Standard (CAS) 414, Cost of Money on Facilities Capital

CAS 414 establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost. This is referred to the "cost of money." DFAIR felt that the cost of money should continue to be treated as an allowable cost. DEPSECDEF agreed and is continuing to treat cost of money as an allowable cost.

3. Conclusion

The DFAIR Study made many important observations and recommendations regarding contract pricing, financing and profit policies. As discussed in the preceeding section, Deputy Defense Secretary Taft followed almost all of the DFAIR recommendations. The most sweeping change which has resulted from DFAIR is the new Weighted Guidelines Method of profit analysis which became effective 18 October 1986. It is still too early to tell at this writing as to how the new system is working out. Due to their few capital assets, the services contractors are unhappy with the shift in emphasis from a cost base to more of a facilities capital employed basis for determining profit. Overall, it should incentivize more contractors to invest in production equipment for work on Government contracts.

4. References

1. Department of Defense, Defense Financial and Investment Review, June 1985.
2. "Financing: Spector Gives Overview of DFAIR Before House Subcommittee," Government Contracts Service, Vol. 15-86, 15 August 1986.
3. "Deputy Defense Secretary Taft's Decisions Implementing Recommendations in DFAIR Study," Federal Contracts Report, Vol. 45, 2 June 1986.

V. LOGISTICS MANAGEMENT SUBJECTS

A. INTEGRATED LOGISTICS SUPPORT (ILS)

The Characteristics and Analysis of Integrated Logistics Support (ILS) must begin with a definition of ILS and a discussion of its role in the acquisition of major weapon systems. The analysis should also include a description of the ILS elements and how these ILS activities are incorporated into the major systems acquisition process. In addition, the analysis should present a discussion of the key players and their responsibilities in the ILS process.

ILS planning must be incorporated early on in the acquisition cycle of major weapon systems. In order for it to be effective, ILS planning must begin at program initiation and continue throughout the life cycle of the system. The next section discusses the elements of an effective ILS program and the importance of ILS in the acquisition and follow on life cycle of major weapon systems.

1. Discussion

ILS is becoming increasingly important in the acquisition of complex weapon systems. To be able to acquire and support effectively, operational commanders must have a strong understanding of logistics support. ILS is the process of planning and managing the system to ensure it operates in a planned and coordinated manner. It is the operational and support element that ensures the system is ready for

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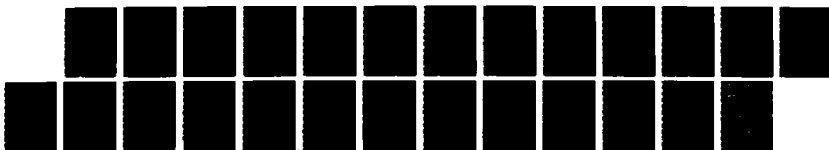
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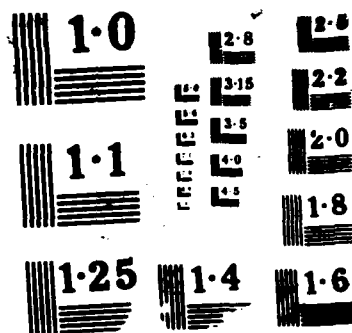
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ILS planning begins at program initiation and continues for the life of the system. System readiness is essential to the acquisition process. "The primary objective of the ILS program shall be to achieve system readiness objectives at an affordable life-cycle cost."

[Ref. 2:p. 2] ILS is defined as:

. . . the integrating of the various logistics elements to assist military weapons systems managers develop and maintain a supportable defense throughout the systems' entire life cycle, wartime or peacetime. [Ref. 1:p. 332]

ILS planning begins in the early design phases of a major weapon system. Logistics supportability is considered as important a design requirement as cost, schedule and performance. The program charter for a major weapon system includes the designation of a logistics manager to assist the program manager (PM) in developing an ILS Plan (ILSP). [Ref. 3:pp. 4-64, 4-65] Once a Mission Area Analysis determines a need exists for a weapon system to fulfill a defense requirement, it is the responsibility of the logistics manager, also called the Assistant or Deputy Program Manager for Logistics (APML) or (DPML), to assist the Program Management Office (PMO) in investigating the availability of an existing system to satisfy the requirements. If no existing system can be found or modified to meet the need requirements, the APML/DPML, along with others in the PMO, shall recommend to the PM that a new weapon system be designed and developed to fulfill the mission requirement. Early ILS planning is incorporated

into the initial design and development phases, allowing weapon system designers to influence the supportability of their system at a relatively low cost. Even minor changes during the design phase of a major weapon system can "have a tremendous impact in out-year logistics support costs." [Ref. 1:pp. 332-333] Supportability is such a major factor in the design of a new weapon system, that support should be included in the design specifications.

Design details with significant support impact can extend the life of the equipment, reduce maintenance time and cost, increase system availability, and reduce supply cost over the system's life cycle. [Ref. 3:p. 4-65]

2. ILS Responsibilities and Key Players

Within the major weapon systems acquisition cycle, the key players for ILS are the PM and the logistics manager (APML/DMPL). The PM has overall responsibility for the success of his/her program, but the logistics manager coordinates the program's ILS functions for the PM. "One of the major duties of the logistics manager, in conjunction with the PM, is to develop and update an ILS Plan (ILSP)." [Ref. 3:p. 4-65] The ILSP provides a guideline for managing the activities and resources which will eventually produce an effective, cost-efficient logistics support system for the weapon system being developed. The ILSP ensures proper support planning, reduces duplication of effort and increases compatibility of resources.

3. ILS Elements

ILS provides a technique for designing supportability requirements into a weapon system concurrently with the system design. This procedure allows for trade-offs among ILS elements to be made early in the acquisition process before the system design is "locked" in. [Ref. 3:p. 4-65]

The major ILS elements are listed and defined below:

- a. Maintenance Planning--The process of establishing maintenance concepts and requirements for the life-time of the major weapon system.
- b. Manpower and Personnel--The process of identifying and recruiting military and civilian personnel with the proper skills and grades to manage, operate and support a major weapon system.
- c. Supply Support--The process of provisioning initial spare parts requirements and providing replenishment support.
- d. Support Equipment--All the equipment required to support the operation and maintenance of a major weapon system.
- e. Technical Data--Scientific or technical recorded information pertaining to the major weapon system.
- f. Training and Training Support--The process of training civilian and military personnel to operate and maintain the weapon system. Also included are the training procedures and training devices.
- g. Computer Resources Support--The hardware, software, personnel, documentation and facilities to support computer systems imbedded in the weapon system.
- h. Facilities--The real property, facilities and related equipment necessary to support a major weapon system. Also included are the studies conducted to determine these requirements.

1. Packaging, Handling, Storage and Transportation--
The process of ensuring all system, equipment and spare parts are preserved, packaged, handled, transported and stored properly.
- j. Design Interface--The relationship of such logistics-related parameters, as reliability and maintainability, to readiness and supportability requirements. [Ref. 2:pp. 2-1, 2-2]

The ILS elements are planned concurrently with the design and development phases of the program, and are merged into the ILSP by a system called logistics support analysis (LSA). LSA includes:

. . . the use of appropriate analytical tools and models throughout the acquisition cycle to evaluate alternative support concepts, to perform trade-offs between system design and ILS elements, and to perform trade-offs among ILS elements in order to meet system readiness objectives at minimum cost. [Ref. 3:p. 4-65]

4. ILS Activities in Major Weapon Systems Acquisition

ILS activity begins at program initiation and continues throughout the entire life cycle of the weapon system. Adequate management attention to ILS, during the early phases of the acquisition process, is essential for ILS to make its greatest contribution to the successful deployment of the weapon system. It is during the early phases, "where the greatest influence can be made on system design characteristics." [Ref. 4:p. 327]

By Program Initiation, support resource constraints have been identified in the Justification for Major System New Start (JMSNS). Based on these resource constraints, the logistics manager must analyze support costs, develop

alternative support concepts and integrate readiness-related requirements into the Statement of Work (SOW) for the new weapon system design. [Ref. 2:p. 3-1]

By Milestone I, the Demonstration and Validation Phase (DEM/VAL), the logistics manager must develop a baseline support concept and integrate it with the system design criteria. The use of contractor ILS support is considered at this time. The logistics manager must assist the PM in drafting milestones for each ILS element and incorporating them into the ILSP. In addition, the logistics manager must identify: (1) major items of support-related hardware and software which need to be developed, (2) preliminary facilities requirements, (3) initial system transportability requirements, (4) various logistics, reliability and maintainability (R&M), including testability, requirements, (5) projected manpower, skill and training resources, specifically maintenance and operator performance, and (6) international logistics considerations. [Ref. 2:pp. 3-1, 3-2]

By Milestone II, the Full-Scale Development Phase (FSD), a baseline support concept, including a maintenance concept, and logistics parameters for readiness, have been established. Trade-offs among hardware characteristics, support requirements and resource constraints have been made to determine the best balance. ILS considerations have been given appropriate weight and visibility in the request for

proposal (RFP) source selection criteria and contract provisions. Contract requirements define peacetime readiness and wartime deployment objectives, the baseline operational scenario and the baseline maintenance concept. Explicit and visible ILS plans and strategies exist for all ILS elements and requirements. [Ref. 2:pp. 3-3, 3-4]

By Milestone III, the Production and Deployment Phase, the ILSP has been determined adequate to meet the objectives for peacetime readiness and wartime deployment. In addition, manpower requirements from DoD component projections can be met, and impacts on the system's readiness, caused by changes in funding, can readily be assessed. Computer software has been developed, along with a system to manage the identification of logistics requirements to ensure that readiness objectives are met and sustained. The ILSP provides for a smooth transition from contractor to in-house support responsibility. In essence, by Milestone III, all ILS Plans are explicit, and adequate resources exist to carry out those plans, to achieve system readiness at an affordable cost over the life of the weapon system. [Ref. 2:pp. 3-4, 3-5]

5. Conclusion

The importance of ILS in the successful development of a major weapon system cannot be overemphasized. "The achievement of logistic supportability necessitates that all support requirements be considered, planned, and budgeted for from the beginning of the development process." [Ref.

3:p. 4-64] Lieutenant General Leo Marquez, USAF, described ILS best when he called it "the jawbone that holds the operational teeth." [Ref. 5:p. 27] ILS supports the weapon system to make sure it is able to perform, as planned, under operational conditions.

6. References

1. Mitchell, Michael A., "Toward a Better Defense: Standardization and Integrated Logistics Support," Proceedings of the 1985 Federal Acquisition Research Symposium, pp. 332-336, 1985.
2. DoD Directive 5000.39, Acquisition and Management of Integrated Logistic Support for Systems and Equipment, 17 November 1983.
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4. Arcieri, Joseph D., "Policy Initiatives to Achieve Readiness and Support Objectives," Proceedings of the 1983 Federal Acquisition Research Symposium, pp. 327-339, 1983.
5. Marquez, Lt Gen Leo, USAF, "Military Logistics: Fair Value for Your Dollar," Program Manager, Vol. XIV:3, DSMC 65, May-June 1985.

7. Bibliography for Further Study

DoD Directive 4151.1, Use of Contractor and DoD Resources for Maintenance of Material, 15 July 1982.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. SUMMARY

The purpose of this thesis was to synopsize the major issues currently impacting the field of Government acquisition. From the ten major issues studied, the following conclusions and recommendations have been reached.

B. CONCLUSIONS AND RECOMMENDATIONS

1. The Acquisition Process

a. Conclusion

The acquisition process in the Federal Government is constantly evolving. New Congressional legislation is continually being introduced, making changes to an already over-regulated system. Those engaged in the Government acquisition process are confronted with a proliferation of laws, regulations, procedures and legal precedents. The Federal acquisition process continues to be an effective mechanism for ensuring that decisions are made by the proper Government official at the lowest level of authority possessing a total view of the program, and at the proper timeframe in the procurement of goods and services for the Federal Government. Despite all of its cumbersome properties, the Federal acquisition process is an effective management system of checks and balances, providing a mechanism to oversee the spending of public funds.

b. Recommendation

Leaders in Government acquisition need to become more proactive in areas of contracting legislation. Rather than waiting until legislation has been drafted and submitted to Congress, Government acquisition leaders need to propose legislative alternatives to Congressional staffs. This practice would give the acquisition community a voice in legislative proposals and subsequent laws.

2. Packard Commission Report

a. Conclusion

The Packard Commission Report has made a dramatic impact on the field of Government acquisition. President Reagan directed Defense Secretary Weinberger to implement virtually all of the Packard Commission recommendations. Many of the changes recommended by the Packard Commission have already been implemented. The most dramatic change was the establishment of a new Under Secretary of Defense for Acquisition (USD(A)). In the opinion of the researcher, this change has the potential for the greatest impact on the future of the field of Federal acquisition. With Mr. Godwin as the new USD(A), the largest acquisition enterprise in the world finally has a full time executive, dedicated solely to acquisition.

b. Recommendation

The recommendations of the Packard Commission should be fully analyzed and implemented. The establishment of the USD(A) is a major step in the right direction. The

defense acquisition community was in need of strong cohesive leadership. Positive steps need to be taken to professionalize and upgrade the status of the acquisition work force to attract and retain qualified professionals.

3. Competition in Acquisition

a. Conclusion

Competition in acquisition has received much greater emphasis than ever before. Much progress has been made to increase the number of competitive actions in Government procurements. Programs such as the Navy's Buy Our Spares Smart (BOSS), have used innovative techniques such as break-out to effectively increase competition. Break-out involves buying spare parts for a major weapon system from a source other than the prime contractor, which is usually the original manufacturer of the weapon system. Using the break-out approach, the Navy has saved millions of dollars by acquiring spare parts directly from the parts manufacturer or by competing the break-out item.

b. Recommendation

Sustained high level attention is needed to keep competition in the forefront of acquisition strategies. The Competition Advocate Program is experiencing considerable success in promoting competition wherever it is possible and practicable. Care must be taken to avoid competition just for competition's sake. Competition must be done whenever it makes sense and saves the Government money. Breaking-out

should be done whenever possible to cut out the expense of companies which provide little to no value added. Break-out is definitely an area where increased savings from competition can be realized.

4. Weapon Systems Warranties

a. Conclusion

Weapon systems warranties do not come without cost to the Government. By shifting the risk of performance from the Government to the weapon systems contractor, the seller becomes liable for proper quality and performance of the weapon system. The contractor charges the Government for this warranty, whereas in the past, the Government was self-insured. In order for the Government to truly benefit from paying for and having a weapon system warranty, Government personnel must diligently manage these warranties. Management of weapon systems warranties is difficult because so many different manufacturers make parts and components for one weapon system. Keeping track of which contractors are responsible for guaranteeing various components is a huge task. When parts are broken-out and purchased from sources other than the prime contractor, the task gets even more complicated. In order for the Government to realize benefits from warranties, an effective warranty management system must be developed.

b. Recommendation

The Government should develop an effective warranties management system in order to realize the

benefits intended. The Government has shifted the risk of performance to the contractor, but the Government must know which contractor provided the warranty in order to enforce it. A sophisticated system of tracking warranties needs to be developed.

5. Source Selection

a. Conclusion

Source selection is an integral part of the acquisition process. In competitively negotiated procurements, the principal objectives of the source selection process, are to maximize competition, minimize the complexity of the selection decision and ensure an impartial evaluation of proposals to select the best offeror. The source selection plan, which is part of the overall acquisition strategy, includes the evaluation criteria to be used in selecting a contractor. Evaluation criteria are developed from the statement of work, and serve to inform the offerors of the importance placed by the Government, on different aspects of the proposal. Once proposals are received by the Government, the source selection official, or the Source Selection Evaluation Board in major weapon systems acquisitions, evaluates each proposal. The final steps include the source selection decision and notification of award. Source selection will always be a major step in the award of Government contracts.

b. Recommendation

Source selection procedures should be tailored to fit each specific acquisition to minimize overall cost to the Government and the contractor. Source selection criteria and their relative importance should come directly from and accurately reflect the intent of the statement of work, with price or cost to the Government, always one of the evaluation criterion. Government contracting officers should ensure that source selection procedures are carefully structured and strictly followed to avoid any appearance of partiality or favoritism in the award of a Government contract.

6. Delays

a. Conclusion

Delays in contractor performance cost the Government time as well as taxpayers' dollars every year. Military readiness as well as Governmental efficiency suffers. Program schedules slip and costs generally increase. Some delays are for good reasons and are excusable. Some are caused by Governmental actions in delivering Government furnished equipment or materials. Others are caused by a combination of actions, or inactions, by both the Government and the contractor.

b. Recommendation

More attention by the contracting officer and the contractor should be placed on preventing or reducing delays. Regardless of where the blame lies, delays need to

be addressed promptly so the contractor can complete the contract and the Government can obtain its material or services in a timely manner. In addition, each situation must be dealt with carefully to avoid further delays or misunderstandings.

7. The Armed Services Board of Contract Appeals (ASBCA)

a. Conclusion

The ASBCA is an efficient and a relatively expeditious administrative means of settling contract disputes that cannot be resolved at the contracting officer level. If all Governmental contract disputes had to be taken through the regular courts system, cases, and as a result Government contracts, would be tied up in litigation for years. The "accelerated method" for resolving disputes, permits a contractor to submit claims of \$50,000 or less before the ASBCA who then must decide the case within 180 days. Under this method the contractor is still allowed to appeal an unfavorable decision to the U.S. Claims Court.

b. Recommendation

Contracting officers and contractors should do everything in their power to settle differences and misunderstandings informally to avoid the disputes process. Disputes are lengthy and costly to both the contractor and the Government. Contracting officers should work to resolve all disagreements with contractors by informal discussions, saving time and money and strengthening business

relationships. When disagreements do enter the disputes process, the contracting officer should issue his/her final decision within the specified time periods required by law, after receiving a written request from the contractor, or within a reasonable time period, if no request is received. When final decisions are issued in an expeditious manner, the facts are fresh and a higher quality decision will generally result.

8. Weighted Guidelines for Profit

a. Conclusion

The Weighted Guidelines (WGLs) method of establishing profit objectives for negotiated Government contracts, promises an amount of profit based on the skills and resources needed to perform the contract, the amount of cost risk involved in the contract and the extent of facilities required to perform the contract. The new WGLs differ dramatically from the method used previously. To incentivize contractors to invest in equipment to be used on Government contracts, the new profit policy increases profit for facilities capital employed. This shift in emphasis from a cost-based profit policy to one based on capital facilities, is expected to reduce the profit levels for contractors without capital facilities. In addition, the disallowance of G&A in the profit base, will cause contractors to appropriately direct charge more costs, and they will be less likely to burden G&A with questionable costs.

b. Recommendation

Experience with the new WGLs should be acquired before any significant adjustments are made. It is incumbent upon contracting officers and contractors to become thoroughly familiar with the new profit policy in order to achieve its principal objectives.

9. The Defense Financial and Investment Review (DFAIR) Study

a. Conclusion

The DFAIR study made many important observations and recommendations regarding contract pricing, financing and profit policies. The most sweeping change which resulted from DFAIR is the new Weighted Guidelines (WGLs) method of profit analysis which became effective 18 October 1986. The new WGLs are designed to result in more Government contractors investing in production equipment for work on Government contracts. A reduction in profit levels for contractors without capital facilities is expected.

b. Recommendation

DoD should implement the DFAIR recommendations for a trial period, to evaluate their effectiveness in achieving desired results such as: (1) reducing excess profits and (2) incentivizing contractors to invest in facilities capital for use on Government contracts. After the trial period, if some of the DFAIR recommended changes are not producing the desired results, DoD should reevaluate them and make the necessary adjustments.

10. Integrated Logistics Support (ILS)

a. Conclusion

The requirement to manage ILS has become increasingly important to program managers of major weapon systems. To be able to perform their mission effectively, operational commanders must have adequate logistics support. ILS provides a technique for designing supportability requirements into a weapon system concurrently with the system design. This procedure allows for trade-offs among ILS elements to be made early in the acquisition process before the system design is "locked" in. ILS planning begins at program initiation and continues for the life of the system. System readiness is essential to the weapon systems acquisition process, and ILS is essential to readiness.

b. Recommendation

ILS planning must be incorporated early in the acquisition of major weapon systems. ILS planning must begin at program initiation and continue throughout the life cycle of the system. Adequate management attention must be focused on ILS during the early phases of the acquisition process, when ILS can have the greatest influence on system design characteristics. Before Milestone I, the logistics manager must assist the program manager in preparing the ILS Plan (ILSP) which includes milestone dates for the implementation of each ILS element. The ILSP must be

continually updated as the logistics manager tracks the progress of ILS functions throughout the major weapon system acquisition process. Early ILS planning must be supported by the program manager to ensure adequate logistics support and operability throughout the life cycle of the weapon system.

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